DOCUMENT RESUME

ED 424 310 UD 031 989

TITLE	Becoming an American: Immigration and Immigrant Policy. 1997 Report to Congress.
INSTITUTION	United States Commission on Immigration Reform, Washington, DC.
SPONS AGENCY	Congress of the U.S., Washington, DC.
PUB DATE	1997-09-00
NOTE	300p.; U.S. Commission on Immigration Reform was disbanded December 31, 1998.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC12 Plus Postage.
DESCRIPTORS	*Acculturation; Adjustment (to Environment); Citizenship Education; Elementary Secondary Education; *Federal Legislation; *Immigrants; *Immigration; Limited English Speaking; *Policy Formation; Public Policy; Refugees
IDENTIFIERS	*Americanization; *Naturalization Programs

ABSTRACT

As mandated by the Immigration Act of 1990, a bipartisan Commission examined and made recommendations about the implementation and impact of the U.S. immigration policy. In examining the immigration policy, the Commission conducted more than 40 public hearings, consultations, and site visits in the United States and some foreign countries. This final report makes recommendations to further the goals of Americanization by setting out immigrant policies to help orient immigrants and their new communities, to improve educational programs that help immigrants and their children learn English and civics, and to reinforce the integrity of the naturalization process by which immigrants become citizens. The report also makes recommendations for immigration policy, repeating and updating the conclusions reached in three previous reports on unlawful migration, legal immigration, refugee and asylum policy, and making additional recommendations for reforming immigration policies. The following chapters are included: (1) "Introduction"; (2) "Americanization and Integration of Immigrants"; (3) "A Credible Framework for Immigration Policy"; (4) "Achieving Immigration Policy Goals"; and (5) "Conclusion." The Commission urges a renewed commitment to the education of immigrant children and a recognition that education is the primary tool of Americanization for children and adults. Appendixes describe the provisions of the Immigration Act of 1990 and present the statement of Commissioner W. E. Leiden. (Contains 101 references.) (SLD)

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ED 424 310

1997 REPORT TO CONGRESS

Becoming an American: Immigration and Immigrant Policy

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U.S. COMMISSION ON IMMIGRATION REFORM

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COVER ART: THE *STATUE OF LIBERTY* (*LIBERTY ENLIGHTENING THE WORLD*), A GIFT FROM FRANCE THAT WAS INTENDED AS A REPRESENTATION OF REPUBLICAN IDEALS, HAS FOR MORE THAN A CENTURY BEEN THE PREEMINENT SYMBOL OF IMMIGRATION TO THE U.S. THE BLINDFOLDED STATUE OF *JUSTICE*, DERIVED FROM THE GREEK GODDESS, THEMIS, REPRESENTS THE ORDER OF SOCIETY ESTABLISHED BY LAW, CUSTOM, AND EQUITY. THESE TWO SYMBOLS HIGHLIGHT THE COMMISSION'S VIEW THAT A CREDIBLE IMMIGRATION POLICY MUST UPHOLD BOTH OUR IMMIGRATION TRADITION AND OUR COMMITMENT TO THE RULE OF LAW.

1997
REPORT TO
CONGRESS

Becoming an American:
Immigration & Immigrant Policy

SEPTEMBER 1997

U.S. COMMISSION ON IMMIGRATION REFORM

The Commissioners and staff
dedicate this final report
of the bipartisan
Commission on Immigration Reform
to the memory of

Barbara Jordan

Chair, U.S. Commission on Immigration Reform
December 14, 1993—January 17, 1996

"We are a nation of immigrants, dedicated to the rule of law.
That is our history—and it is our challenge to ourselves.
. . .It is literally a matter of who we are as a nation
and who we become as a people. E Pluribus Unum.
Out of many, one. One people. The American people."

(Barbara Jordan, August 1995)

September 30, 1997

The Honorable Newt Gingrich, Speaker of the House of Representatives
The Honorable Richard Gephardt, Minority Leader of the House of Representatives
The Honorable Trent Lott, Majority Leader of the Senate
The Honorable Tom Daschle, Minority Leader of the Senate

On behalf of the U.S. Commission on Immigration Reform, it is my pleasure to submit our Final Report, *Becoming an American: Immigration and Immigrant Policy.*

As mandated by the Immigration Act of 1990 [Public Law 101-649], this bipartisan Commission has examined and made recommendations regarding the implementation and impact of U.S. immigration policy. In fulfilling our mission, the Commission has held more than forty public hearings, consultations, site visits and expert discussions throughout the United States and in certain key foreign countries.

This report underscores the need for credible, coherent immigrant and immigration policy. Admission to this nation is only the first step of a process by which an immigrant becomes an American. Through the process of Americanization, immigrants become part of our communities and our communities learn from and adapt to their presence. We set out recommendations for immigrant policies that enhance this process through orientation services for immigrants and their new communities, English and civics education, and a credible, efficient naturalization process.

We also recommend immigration reforms. Since the Commission issued its 1994 report on illegal migration, significant progress has been made in improving border management, increasing criminal alien removals, reforming the asylum process, responding to mass migration emergencies, and pilot testing new worksite verification procedures. Illegal migration remains a problem, however, necessitating continued deterrence and removal efforts. In addition, we reiterate our call for legal immigration reform and make new recommendations regarding limited duration admissions.

In addition, we urge Congress to reconsider the welfare reform legislation adopted in 1996 that makes legal immigrants ineligible for basic safety net programs. Requiring immigrants to become citizens in order to receive the protections afforded by these programs debases citizenship. Further, making citizenship rather than legal status the determinant of eligibility blurs the distinction between legal immigrants, whom we welcome, and illegal aliens.

Restoring the credibility of our immigration system cannot happen unless the federal government is structured and managed effectively. While the Executive Branch has taken significant steps to address many of the weaknesses in current operations, the organization of the immigration system undermines reform efforts. Hence, in this report, we recommend a fundamental restructuring and streamlining of responsibilities for immigration.

Our work benefitted greatly from the effective cooperation we received from the Executive Branch and both Houses of Congress. We also thank the dozens of researchers who have contributed the results of their scholarship and the hundreds of community leaders, government officials, service providers and other experts who participated in our public hearings and consultations.

I particularly thank my fellow Commissioners. We have struggled with many tough issues, and we have reached consensus on nearly all of our recommendations. Without the dedication, hard work, and good humor of the members of this Commission, we could not have achieved this agreement. The work of the Commission could not have been accomplished without the support of an extraordinary staff led by Susan Martin, Executive Director and Andrew Schoenholtz, Deputy Director, assisted by the members of the Policy Research, the Public Affairs, Editorial, and Administrative Staffs. Each staff member has worked tirelessly to provide the Commission with volumes of valuable information, policy memoranda, and logistical support. The Commission is also indebted to the Executive Branch for lending outstanding career persons to serve on the Commission's staff.

Sincerely,

Shirley M. Hufstedler

Shirley M. Hufstedler
Chair

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INTRODUCTION

Immigration and immigrant policy is about immigrants, their families and the rest of us. It is about the meaning of American nationality and the foundation of national unity. It is about uniting persons from all over the world in a common civic culture.

The process of becoming an American is most simply called "Americanization," which must always be a two-way street. All Americans, not just immigrants, should understand the importance of our shared civic culture to our national community. This final report of the U.S. Commission on Immigration Reform makes recommendations to further the goals of Americanization by setting out *immigrant* policies to help orient immigrants and their new communities, to improve educational programs that help immigrants and their children learn English and civics, and to reinforce the integrity of the naturalization process through which immigrants become U.S. citizens.

This report also makes recommendations regarding *immigration* policy. It reiterates the conclusions we reached in three interim reports—on unlawful migration, legal immigration, and refugee and asylum policy—and makes additional recommendations for reforming immigration policies. Further, in this report, the Commission recommends ways to improve the structure and management of the federal agencies responsible for achieving the goals of immigration policy. It is our hope that this final report *Becoming An American: Immigration and Immigrant Policy,* along with our three interim reports, constitutes a full response to the work assigned the Commission by Congress: to assess the national interest in immigration and report how it can best be achieved.

MANDATE AND METHODS

Public Law 101-649, the Immigration Act of 1990, established this Commission to review and evaluate the impact of immigration policy. More specifically, the Commission must report on the impact of immigration on: the need for labor and skills; employment and other economic conditions; social, demographic, and environmental impact of immigration; and impact of immigrants on the foreign policy and national security interests of the United States. The Commission engaged in a wide variety of fact-finding activities to fulfill this mandate. Site visits were conducted throughout the United States. Commission members visited immigrant and refugee communities in California, Texas, Florida, New York, Massachusetts, Illinois, Arizona, Washington, Kansas, Virginia, Washington, DC, Puerto Rico and the Commonwealth of the Northern Mariana Islands. We also visited such major source countries as Mexico, the Dominican Republic, Cuba, Haiti, and the Philippines. To increase our understanding of international refugee policy issues, we visited Bosnia, Croatia, Germany, and Kenya, and we consulted with Geneva-based officials from the U.N. High Commission for Refugees and the International Organization for Migration. We held more than forty public hearings, consultations with government and private sector officials, and expert roundtable discussions.

IMMIGRATION TODAY

The effects of immigration are numerous, complex, and varied.[1] Immigrants contribute in many ways to the United States: to its vibrant and diverse communities; to its lively and participatory democracy; to its vital intellectual and cultural life, to its renowned

---

[1] Please see the full report for a more detailed discussion of the economic, social, demographic, foreign policy, and national security implications for U.S. immigration.

Immigrant Admissions by Major Category: FYs 1992-1996

Category of Admission	1992	1993	1994	1995	1996
SUBJECT TO THE NUMERICAL CAP	**655.541**	**719,701**	**662.029**	**593.234**	**771.604**
FAMILY-BASED IMMIGRANTS	**502.995**	**539.209**	**497.682**	**460.653**	**595.540**
Immediate Relatives of U.S. citizens	235.484	255.059	249.764	220.360	350,192
Spouses and children	170.720	192.631	193.394	171.978	283.592
Parents	64.764	62.428	56.370	48.382	66.600
Children born abroad to alien residents	2.116	2.030	1.883	1.894	1.658
Family-sponsored immigrants	213.123	226.776	211.961	238.122	293.751
Unmarried sons/daughters of U.S. citizens	12.486	12.819	13.181	15.182	20.885
Spouses and children of LPRs	90.486	98.604	88.673	110.960	145.990
Sons and daughters of LPRs	27.761	29.704	26.327	33.575	36.559
Married sons/daughters of U.S. citizens	22.195	23.385	22.191	20.876	25.420
Siblings of U.S. citizens	60.195	62.264	61.589	57.529	64.897
Legalization dependents	52.272	55.344	34.074	277	184
EMPLOYMENT-BASED IMMIGRANTS	**116,198**	**147,012**	**123,291**	**85.336**	**117,346**
Priority workers	5.456	21.114	21.053	17.339	27.469
Professionals w/ adv. deg. or of advanced ability	58.401	29.468	14.432	10.475	18.436
Skilled, professionals, other workers, (CSPA)	47.568	87.689	76.956	50.245	62.674
Skilled, professionals, other workers	47.568	60.774	55.659	46.032	62.273
Chinese Student Protection Act (CSPA)	X	26.915	21.297	4.213	401
Special immigrants	4.063	8.158	10.406	6.737	7.831
Investors	59	583	444	540	936
Professionals or highly skilled (Old 3rd)	340	X	X	X	X
Needed skilled or unskilled workers (Old 6th)	311	X	X	X	X
DIVERSITY PROGRAMS	**36.348**	**33.480**	**41.056**	**47.245**	**58.718**
Diversity permanent	X	X	X	40.301	58.174
Diversity transition	33.911	33.468	41.056	6.994	544
Nationals of adversely affected countries	1.557	10	X	X	X
Natives of underrepresented countries	880	2	X	X	X
NOT SUBJECT TO THE NUMERICAL CAP	**155.094**	**160.313**	**136.365**	**122.960**	**138.323**
Amerasians	17.253	11.116	2.822	939	954
Cuban/Haitian Entrants	99	62	47	42	29
Parolees, Soviet and Indochineese	13.661	15.772	8.253	3.120	2.283
Refugees and Asylees	117.037	127.343	121.434	114.632	128.367
Refugee adjustments	106.379	115.539	115.451	106.795	118.345
Asylee adjustments	10.658	11.804	5.983	7.837	10.022
Registered Nurses and their families	3.572	2.178	304	69	16
Registry, entered prior to 1/1/72	1.293	938	667	466	356
Other	2.179	2.904	2.838	3.692	6.318
TOTAL	**810.635**	**880.014**	**798.394**	**716.194**	**909.959**

Note: X = Not Applicable. Excludes persons granted LPR status under the provisions of the Immigration Reform and Control Act of 1986.
Source: Immigration and Naturalization Service, Statistics Division.

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job-creating entrepreneurship and marketplaces; and to its family values and hard-work ethic. However, there are costs as well as benefits from today's immigration. Those workers most at risk in our restructuring economy—low-skilled workers in production and service jobs—are those who directly compete with today's low-skilled immigrants. Further, immigration presents special challenges to certain states and local communities that disproportionately bear the fiscal and other costs of incorporating newcomers.

Properly-regulated immigration and immigrant policy serves the national interest by ensuring the entry of those who will contribute most to our society and helping lawful newcomers adjust to life in the United States. It must give due consideration to shifting economic realities. A well-regulated system sets priorities for admission; facilitates nuclear family reunification; gives U.S. employers access to a global labor market while ensuring that U.S. workers are not displaced or otherwise adversely affected; and fulfills our commitment to resettle refugees as one of several elements of humanitarian protection of the persecuted.

AMERICANIZATION AND INTEGRATION OF IMMIGRANTS

A DECLARATION OF PRINCIPLES AND VALUES

Immigration to the United States has created one of the world's most successful multiethnic nations. We believe these truths constitute the distinctive characteristics of American nationality:

- American unity depends upon a widely-held belief in the principles and values embodied in the American Constitution and their fulfillment in practice: equal protection and justice under the law; freedom of speech and religion; and representative government;

- Lawfully admitted newcomers of any ancestral nationality—without regard to race, ethnicity, or religion—truly become Americans when they give allegiance to these principles and values;

- Ethnic and religious diversity based on personal freedom is compatible with national unity; and

- The nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages.

As long as we live by these principles and help newcomers to learn and practice them, we will continue to be a nation that benefits from substantial but well-regulated immigration. We must pay attention to our core values, as we have tried to do in our recommendations throughout this report. Then, we will continue to realize the lofty goal of *E Pluribus Unum.*[2]

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[2] Our national motto, *E Pluribus Unum*, "from many, one," was originally conceived to denote the union of the thirteen states into one nation. Throughout our history, *E Pluribus Unum* has also come to mean the vital unity of our national community founded on individual freedom and the diversity that flows from it.

AMERICANIZATION

The Commission reiterates its call for the Americanization of new immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity. The United States has fought for the principles of individual rights and equal protection under the law, notions that now apply to all our residents. We have long recognized that immigrants are entitled to the full protection of our Constitution and laws. And, the U.S. has the sovereign right to impose obligations on immigrants.

Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence.

In our 1995 report to Congress, the Commission called for a new commitment to Americanization. In a public speech that same year, Barbara Jordan, our late chair, noted: "That word earned a bad reputation when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back." Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence. Americanization means the civic incorporation of immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy, and equal opportunity.

The Commission proposes that the principles of Americanization be made more explicit through the covenant between immigrant and nation. Immigrants become part of us, and we grow and become all the stronger for having embraced them. In this spirit, the Commission sees the covenant as:

> ***Voluntary.*** Immigration to the United States—a benefit to both citizens and immigrants—is not an entitlement and Americanization cannot be forced.

Mutual and Reciprocal. Immigration presents mutual obligations. Immigrants must accept the obligations we impose—to obey our laws, to pay taxes, to respect other cultures and ethnic groups. At the same time, citizens incur obligations to provide an environment in which newcomers can become fully participating members of our society.

Individual, Not Collective. The United States is a nation founded on the proposition that each individual is born with certain rights and that the purpose of government is to secure these rights. The United States admits immigrants as individuals (or individual members of families). As long as the United States continues to emphasize the rights of individuals over those of groups, we need not fear that the diversity brought by immigration will lead to ethnic division or disunity.

To help achieve full integration of newcomers, the Commission calls upon federal, state, and local governments to provide renewed leadership and resources to a program to promote Americanization that requires:

- Developing capacities to orient both newcomers and receiving communities;
- Educating newcomers in English language skills and our core civic values; and
- Revisiting the meaning and conferral of citizenship to ensure the integrity of the naturalization process.

ORIENTATION

Information and orientation should be provided both to immigrants and to their receiving communities.

The Commission recommends that the federal, state, and local governments take an active role in helping newcomers become self-reliant: orienting immigrants and receiving communities as to their mutual rights and responsibilities, providing information they need for successful integration, and encouraging the development of local capacities to mediate when divisions occur between groups. Information and orientation should be provided both to immigrants and to their receiving communities.

The Commission believes the federal government should help immigrants and local communities by:

- **Giving orientation materials to legal immigrants upon admission** that include, but are not limited to: a welcoming greeting; a brief discussion of U.S. history, law, and principles of U.S. democracy; tools to help the immigrant locate and use services for which they are eligible; and other immigration-related information and documents. All immigrants would receive the same materials. The packets would be available in English and other dominant immigrant languages.

- **Encouraging state governments to establish information clearinghouses in major immigrant receiving communities.** The Commission recommends that the federal government provide modest incentive grants to states to encourage them to establish and maintain local resources that would provide information to immigrants and local communities.

- **Promoting public/private partnerships to orient and assist immigrants in adapting to life in the United States.** While the federal government makes the decisions about how many and which immigrants will be admitted to the United States,

TOP TEN COUNTRIES OF ORIGIN OF LEGAL IMMIGRANTS: 1996

Mexico	159,731
Philippines	55,778
India	44,781
Vietnam	42,006
Mainland China	41,662
Dominican Republic	39,516
Cuba	26,415
Ukraine	21,051
Russia	19,646
Jamaica	19,029

Source: INS FY 1996 Public Use Admissions Data the actual process of integration takes place in local communities. Local government, schools, businesses, charities, foundations, religious institutions, ethnic associations, and other groups play important roles in the Americanization process.

TOP TEN INTENDED STATES OF RESIDENCE OF LEGAL IMMIGRANTS: 1996

California	199,221
New York	153,731
Texas	82,229
Florida	79,067
New Jersey	63,162
Illinois	42,154
Massachusetts	23,017
Virginia	21,329
Maryland	20,683
Washington	18,718

Source: INS FY 1996 Public Use Admissions Data

EDUCATION

Education is the principal tool of Americanization. Local educational institutions have the primary responsibility for educating immigrants. However, there is a federal role in promoting and funding English language acquisition and other academic and civic orientation for both immigrant children and adults.

The Commission urges a renewed commitment to the education of immigrant children. The number of school-aged children of immigrants is growing and expected to increase dramatically. These children, mostly young, speak more than 150 different languages; many have difficulty communicating in English. They are enrolled in public schools as well as in secular and religious private schools throughout the country. And, in addition to the problems other students have, they face particular problems in gaining an education—often because of language difficulties.

The Commission emphasizes that rapid acquisition of English should be the paramount goal of any immigrant language instruction program. English is the most critical of basic skills for successful integration. English can be taught to children in many ways. Effective programs share certain common characteristics. Based on a review of these programs, the Commission emphasizes the need for public and private educational programs to:

English is the most critical of basic skills for successful integration.

- **Conduct regular evaluations of students' English competence and their ability to apply it to academic subjects.**

Such evaluations will ensure placement of immigrant children into regular English-speaking classes as soon as they are prepared. Regular evaluation also will highlight strengths and weaknesses in educational programs and provide insight on improvements that are needed to ensure timely English acquisition.

- **Collect and analyze data** on immigrant students, including their linguistic and academic performance and the efficacy of the instructional methods used in programs for immigrant children.

- **Include appropriate grade-level instruction in other academic disciplines.** Coordination with teachers, curricula, and instruction outside of English acquisition will promote students' mastery of regular subject matter while they expeditiously learn English.

- **Involve parents of immigrant students in their schooling.** A characteristic of many of the most successful language acquisition programs is the active involvement of parents in the education of their children.

The Commission encourages programs that are responsive to the needs of immigrant children and an orientation to United States school systems and the community, such as we have seen in "newcomer schools." Newcomer schools must not isolate immigrant newcomers. Instead, they must be transitional and actively promote the timely integration of students into mainstream schools.

The Commission recommends the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship. An understanding of the history of the United States and the principles and practices of our government are an essential for all students, immigrants and natives alike. Americanization requires a renewed emphasis on the common core of civic culture that unites individuals from many ethnic and racial groups.

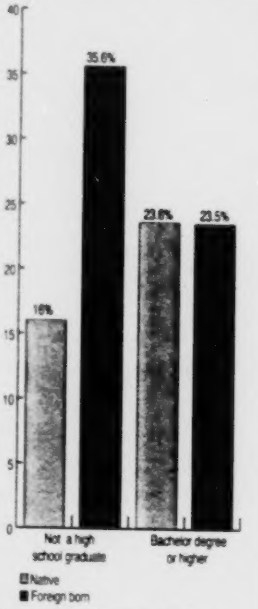
The Commission emphasizes the urgent need to recruit, train, and provide support to teachers who work with immigrant students. There is a disturbing shortage of qualified teachers for children with limited English proficiency, of teacher training programs for producing such teachers, and of other support for effective English acquisition instruction.

The Commission supports immigrant education funding that is based on a more accurate assessment of the impact of immigration on school systems and that is adequate to alleviate these impacts. There are costs and responsibilities for language acquisition and immigrant education programs that are not now being met. We urge the federal government to do its fair share in meeting this challenge. The long-term costs of failure in terms of dropouts and poorly educated adults will be far larger for the nation and local communities than the costs of such programs. More specifically, we urge the federal government to:

- **Provide flexibility in federal funding for the teaching of English to immigrant students to achieve maximum local choice of instructional model.** The federal government should not mandate any one mode of instruction (e.g., bilingual education, English as a second language programs, immersion).

- **Make funding contingent on performance outcomes—that is, English language acquisition and mastery of regular academic subject matter by students served in these programs.** School systems receiving funds because of large numbers of children with limited English proficiency and immigrant children should be held to rigorous performance

EDUCATIONAL ATTAINMENT NATIVE AND FOREIGN-BORN RESIDENTS: 1996



Source: U.S. Bureau of the Census, *Current Population Survey*, March 1996.

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standards. Federal and state funding incentives should promote—not impede—expeditious placement in regular, English-speaking classes.

The Commission urges the federal, state, and local governments and private institutions to enhance educational opportunities for adult immigrants. Education for basic skills and literacy in English is the major vehicle that integrates adult immigrants into American society and participation in its civic activities. Literate adults are more likely to participate in the workforce and twice as likely to participate in our democracy. Literate adults foster literacy in their children, and parents' educational levels positively affect their children's academic performance.

Adult education is severely underfunded. Available resources are inadequate to meet the demand for adult immigrant education, particularly for English proficiency and job skills. In recognition of the benefits they receive from immigration, the Commission urges leaders from businesses and corporations to participate in skills training, English instruction, and civics education programs for immigrants. Religious schools and institutions, charities, foundations, community organizations, public and private schools, colleges and universities also can contribute resources, facilities, and expertise.

NATURALIZATION

Naturalization is the most important act that a legal immigrant undertakes in the process of becoming an American. Taking this step confers upon the immigrant all the rights and responsibilities of civic and political participation that the United States has to offer (except to become President). The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

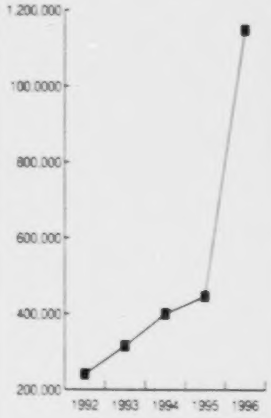
The Commission believes that the current legal requirements for naturalization are appropriate, but improvements are needed in the means used to measure whether an applicant meets these requirements. With regard to the specific legal requirements, the Commission supports:

- **Maintaining requirements that legal immigrants must reside in the United States for five years (three years for spouses of U.S. citizens and Lawful Permanent Residents [LPRs] who serve in the military) before naturalizing.** We believe five years is adequate for immigrants to embrace, understand, and demonstrate their knowledge of the principles of American democracy.

- **Improving the mechanisms used to demonstrate knowledge of U.S. history, civics, and English competence.** The Commission believes that the tests used in naturalization should seek to determine if applicants have a meaningful knowledge of U.S. history and civics and are able to communicate in English. The tests should be standardized and aim to evaluate a common core of information to be understood by all new citizens.

- **Expediting swearing-in ceremonies while maintaining their solemnity and dignity.** In districts where the federal court has exercised sole jurisdiction to conduct the swearing-in ceremonies, long delays often result from crowded court calendars. The Commission recommends that Congress restore the Executive Branch's sole jurisdiction for naturalization to reduce this waiting time. The Executive Branch should continue to work with federal judges as well as other qualified institutions, such as state courts and Immigration Judges, to ensure that swearing-in ceremonies are consistently conducted in a timely, efficient, and dignified manner.

NATURALIZATION APPROVALS 1992-1996



Source: INS Statistical Office

- **Revising the naturalization oath to make it comprehensible, solemn, and meaningful.** The current oath is not easy to comprehend. We believe it is not widely understood by new citizens. Its wording includes dated language, archaic form, and convoluted grammar. The Commission proposes the following revision of the oath as capturing the essence of naturalization.

> ***Solemnly, freely, and***
> ***without any mental reservation,***
> ***I,* [name] *hereby renounce under oath***
> ***[or upon affirmation]***
> ***all former political allegiances.***
> ***My sole political fidelity***
> ***and allegiance from this day forward***
> ***is to the United States of America.***
> ***I pledge to support and respect***
> ***its Constitution and laws.***
> ***Where and if lawfully required,***
> ***I further commit myself to defend them***
> ***against all enemies, foreign and domestic,***
> ***either by military or civilian service.***
> ***This I do solemnly swear [or affirm].***

The Commission calls for urgently needed reforms to increase the efficiency and integrity of the naturalization process. The vast majority of applicants for naturalization are law-abiding immigrants who contribute to our society. The value of Americanization is eroded whenever unnecessary obstacles prevent eligible immigrants from becoming citizens. Its value also is undermined when the process permits the abuse of our laws by naturalizing applicants who are not entitled to citizenship.

As under current regulations, new citizens will conclude the oath with the words "so help me God" unless, because of religious beliefs or by other reasons of conscience they choose to affirm their allegiance.

Recognizing steps already are underway to reengineer the naturalization process, the Commission supports the following approaches:

- **Instituting efficiencies without sacrificing quality controls.** In the Commission's 1995 report to Congress, we recommended that the Immigration and Naturalization Service [INS] and the Congress take steps to expedite the processing of naturalization applications while maintaining rigorous standards. Two years later, the naturalization process still takes too long, and previous efforts to expedite processing resulted in serious violations of the integrity of the system. Instituting a system that is both credible and efficient remains a pressing need.

- **Improving the integrity and processing of fingerprints.** The Commission believes that only service providers under direct control of the federal government should be authorized to take fingerprints. If the federal government does not take fingerprints itself but instead contracts with service providers, it must screen and monitor such providers rigorously for their capacity, capability, and integrity. Failure to meet standards would mean the contract would be terminated.

- **Contracting with a single English and civics testing service.** The Commission recommends that the federal government contract with one national and respected testing service to develop and administer the English and civics tests to naturalization applicants. Having one organization under contract should help the government substantially improve its oversight. Moreover, contracting with a highly-respected and nationally-recognized testing service will help ensure a high-quality product.

The value of Americanization is eroded whenever unnecessary obstacles prevent eligible immigrants from becoming citizens.

- **Increasing professionalism**. While many naturalization staff are highly professional in carrying out their duties, reports from district offices, congressional hearings, and complaints from naturalization applicants demonstrate continued dissatisfaction with the quality of naturalization services. Recruitment and training of longer-term staff assigned to adjudicating applications and overseeing quality control would help overcome some of these problems.

- **Improving automation.** The Commission is encouraged by plans to develop linkages among data sources related to naturalization. The Commission recommends continued funding for an up-to-date, advanced, electronic automation system for information entry and recordkeeping.

- **Establishing clear fee-waiver guidelines and implementing them consistently.** Under current law, the Attorney General is authorized to grant fee waivers to naturalization applicants. The Commission has received accounts of legitimate requests being denied. Clear guidelines and consistent implementation are needed to ensure that *bona fide* requests are granted, while guarding against abuse.

A CREDIBLE FRAMEWORK FOR IMMIGRATION POLICY

In our previous reports, the Commission defined a credible immigration policy "by a simple yardstick: people who should get in do get in, people who should not get in are kept out; and people who are judged deportable are required to leave." By these measures, we have made substantial, but incomplete, progress. What follows are the Commission's recommendations for comprehensive reform to achieve more fully a credible framework for immigration policy.

LEGAL PERMANENT ADMISSIONS

The Commission reiterates its support for a properly-regulated system for admitting lawful permanent residents.[3] Research and analyses conducted since the issuance of the Commission's report on legal immigration support our view that a properly-regulated system of legal permanent admissions serves the national interest. The Commission urges reforms in our legal immigration system to enhance the benefits accruing from the entry of newcomers while guarding against harms, particularly to the most vulnerable of U.S. residents—those who are themselves unskilled and living in poverty. More specifically, the Commission reiterates its support for:

A properly-regulated system of legal permanent admissions serves the national interest.

- **A significant redefinition of priorities and reallocation of existing admission numbers to fulfill more effectively the objectives of our immigration policy.** The current framework for legal immigration—family, skills, and humanitarian admissions—makes sense. However, the statutory and regulatory priorities and procedures for admissions do not adequately support the stated intentions of legal immigration—to reunify families, to provide employers an opportunity to recruit foreign workers to meet labor needs, and to respond to humanitarian crises around the world. During the two years since our report on legal immigration, the problems in the legal admission system have not been solved. Indeed, some of them have worsened.

  Current immigration levels should be sustained for the next several years while the U.S. revamps its legal immigration system and shifts the priorities for admission away from the extended family and toward the nuclear family and away

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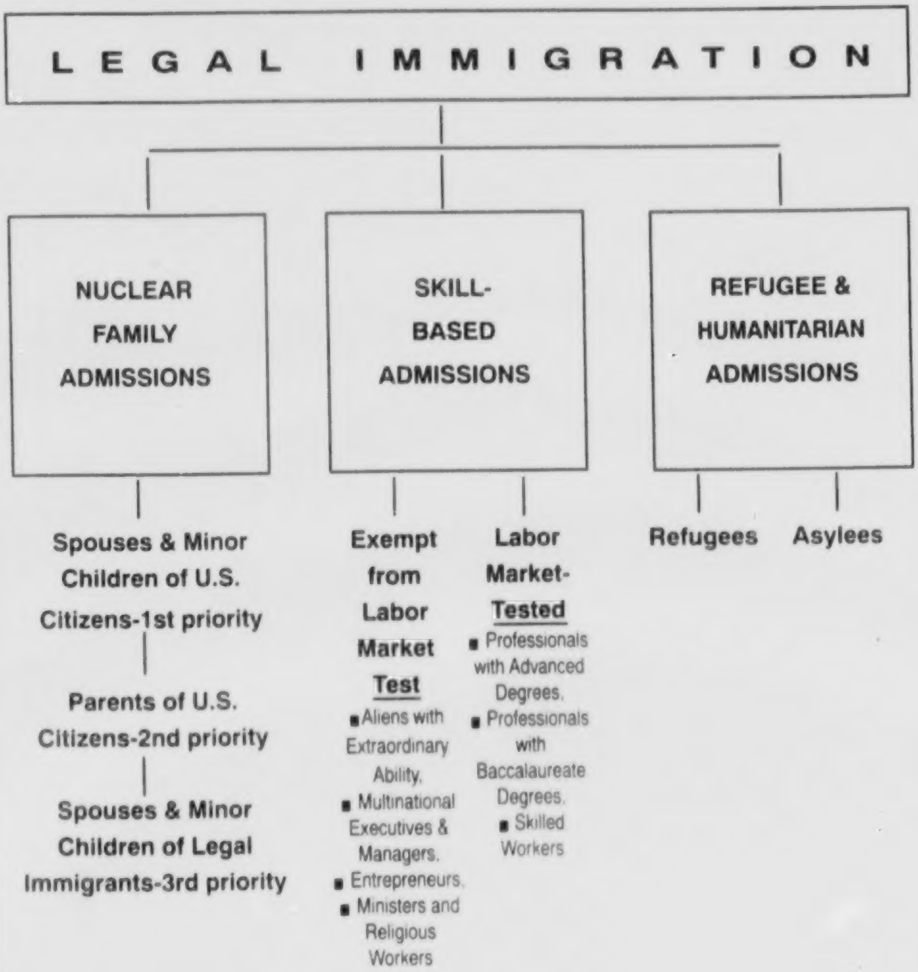
[3] For a full explanation of the Commission's recommendations see *Legal Immigration: Setting Priorities*, 1995. See Appendix for summary of Commissioner Leiden's dissenting statement.

Proposed Tripartite Immigration System


LEGAL IMMIGRATION
NUCLEAR FAMILY ADMISSIONS
SKILL-BASED ADMISSIONS
REFUGEE & HUMANITARIAN ADMISSIONS
Spouses & Minor Children of U.S. Citizens-1st priority
Parents of U.S. Citizens-2nd priority
Spouses & Minor Children of Legal Immigrants-3rd priority
Exempt from Labor Market Test
■ Aliens with Extraordinary Ability.
■ Multinational Executives & Managers.
■ Entrepreneurs.
■ Ministers and Religious Workers
Labor Market-Tested
■ Professionals with Advanced Degrees.
■ Professionals with Baccalaureate Degrees.
■ Skilled Workers
Refugees
Asylees

from the unskilled and toward the higher-skilled immigrant. Thereafter, modest reductions in levels of immigration—to about 550,000 per year, comparable to those of the 1980s—will result from the changed priority system. The Commission continues to believe that legal admission numbers should be authorized by Congress for a specified time (e.g., three to five years) to ensure regular, periodic review and, if needed, change by Congress. This review should consider the adequacy of admission numbers for accomplishing priorities.

- **Family-based admissions that give priority to nuclear family members—spouses and minor children of U.S. citizens, parents of U.S. citizens, and spouses and minor children of lawful permanent residents—and include a backlog clearance program to permit the most expeditious entry of the spouses and minor children of LPRs.** The Commission recommends allocation of 550,000 family-based admission numbers each year until the large backlog of spouses and minor children is cleared. Numbers going to lower priority categories (e.g., adult children, siblings, and diversity immigrants), should be transferred to the nuclear family categories. Thereafter Congress should set sufficient admission numbers to permit all spouses and minor children to enter expeditiously.

Since the Commission first reported its findings on legal admission, the problems associated with family-based admissions have grown. In 1995, the wait between application and admission of the spouses and minor children of LPRs was approximately three years. It is now more than four and one-half years and still growing. Moreover, various statutory changes made in 1996 make it all the more important that Congress take specific action to clear the backlog quickly to regularize the status of the spouses and minor children of legal permanent residents in the United States. In an effort to deter illegal migration, Congress expanded the bases and number of grounds upon which persons may be denied legal status because of a previous illegal entry or overstay of a visa. An unknown, but believed to be large, number of spouses and minor children of LPRs awaiting legal status are unlawfully present in the United States. While the Commission does not condone their illegal presence, we are cognizant of the great difficulties posed by the long waiting period for a family second preference visa.

- **Skill-based admissions policies that enhance opportunities for the entry of highly-skilled immigrants, particularly those with advanced degrees, and eliminate the category for admission of unskilled workers.** The Commission continues to recommend that immigrants be chosen on the basis of the skills they contribute to the U.S. economy. Only if there is a compelling national interest—such as nuclear family reunification or humanitarian admissions—should immigrants be admitted without regard to the economic contributions they can make.

Research shows that education plays a major role in determining the impacts of immigration. Immigration of unskilled immigrants comes at a cost to unskilled U.S. workers, particularly established immigrants for whom new immigrants are economic substitutes. Further, the difference in estimated lifetime fiscal effects of immigrants by education is striking: using the same methodology to estimate net costs and benefits, immigrants with a high school education or more are found to be net contributors while those without a high school degree continue to be net costs to taxpayers throughout their lifetime.[4]

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[4] National Research Council. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* Washington, DC: National Academy Press.

The Commission also continues to recommend changes in the procedures used in testing the labor market impact of employment-based admissions. Rather than use the lengthy, costly, and bureaucratic labor certification system, the Commission recommends using market forces as a labor market test. To ensure a level playing field for U.S. workers, employers would attest to having taken appropriate steps to recruit U.S. workers, paying the prevailing wage, and complying with other labor standards. Businesses recruiting foreign workers also would be required to make significant financial investments in certified private sector initiatives dedicated to improving the competitiveness of U.S. workers. These payments should be set at a per worker amount sufficient to ensure there is no financial incentive to hire a foreign worker over a qualified U.S. worker.

- **Refugee admissions based on human rights and humanitarian considerations, as one of several elements of U.S. leadership in assisting and protecting the world's persecuted.**[5] Since its very beginnings, the United States has been a place of refuge. The Commission believes continued admission of refugees sustains our humanitarian commitment to provide safety to the persecuted, enables the U.S. to pursue foreign policy interests in promoting human rights, and encourages international efforts to resettle persons requiring rescue or durable solutions. The Commission also urges the federal government to continue to support international assistance and protection for the majority of the world's refugees for whom resettlement is neither appropriate nor practical.

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[5] For a full explanation of the Commission's refugee-related recommendations, see *U.S. Refugee Policy: Taking Leadership*, 1997.

The Commission continues to recommend against denying benefits to legal immigrants solely because they are noncitizens. The Commission believes that the denial of safety net programs to immigrants solely because they are noncitizens is not in the national interest. In our 1994 and 1995 reports, the Commission argued that Congress should address the most significant uses of public benefit programs—particularly, elderly immigrants using Supplementary Security Income—by requiring sponsors to assume full financial responsibility for newly-arriving immigrants who otherwise would be excluded on public charge grounds. In particular, the Commission argued that sponsors of parents who would likely become public charges assume the responsibility for the lifetimes of the immigrants (or until they became eligible for Social Security on the basis of work quarters). We also argued that sponsors of spouses and children should assume responsibility for the duration of the familial relationship or a time-specified period. We continue to believe that this targeted approach makes greater sense than a blanket denial of eligibility for public services based solely on a person's alienage.

Persons admitted for limited duration stays help to enhance our scientific, cultural, educational, and economic strength.

LIMITED DURATION ADMISSIONS

Persons come to the United States for limited duration stays for several principal purposes: representation of a foreign government or other foreign entities; work; study; and short-term visits for commercial or personal purposes, such as tourism and family visits. These individuals are statutorily referred to as "nonimmigrants." In this report, however, we refer to "limited duration admissions [LDAs]," a term that better captures the nature of their admission: When the original admission expires, the alien must either leave the country or meet the criteria for a new LDA or permanent residence.

For the most part LDAs help enhance our scientific, cultural, educational, and economic strength. However, the admission of LDAs is

Limited Duration Admissions and Visa Issuances

Class of Admission	Admissions (Entries) 1996	Visa Issuances 1996
All classes*	24,842,503	6,237,870
Foreign government officials (& families) (A)	118,157	78,078
Temporary visitors for business and pleasure (B1,B2)	22,880,270	4,947,899
Transit aliens (C)	325,538	186,556
Treaty traders and investors (& families) (E)	138,568	29,909
Students (F1, M1)	426,903	247,432
Students' spouses/children (F2, M2)	32,485	21,518
Representatives (& families) to international organizations (G)	79,528	30,258
Temporary workers and trainees	227,440	81,531
Specialty occupations (H-1B)	144,458	58,327
Performing services unavailable (H2)	23,980	23,204
Agricultural workers (H-2A)	9,635	11,004
Unskilled workers (H-2B)	14,345	12,200
Workers with extraordinary ability (O1, O2)	9,289	4,359
Internationally recognized athletes or entertainers (P1, P2, P3)	33,633	23,885
Exchange & religious workers (Q1, R1)	11,048	5,946
Spouses/children of temporary workers and trainees (H4, O3, P4, R2)	53,572	38,496
Exchange visitors (J1)	215,475	171,164
Spouses/children of exchange visitors (J2)	41,250	33,068
Intracompany transferees (L1)	140,457	32,098
Spouses/children of transferees (L2)	73,305	37,617

Sources: Admissions: U.S. Immigration and Naturalization Service statistical division. Visa Issuances: U.S. Department of State. 1996. *Report of the Visa Office, 1996*. Washington, DC: DOS, Bureau of Consular Affairs.

*Categories may not equal total because of omitted categories (e.g., fiancé(e)s of U.S. citizens, overlapping Canadian Free Trade Agreement professionals, unknown, NATO officials and professionals, and foreign media).

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not without costs and, as explained below, certain reforms are needed to make the system even more advantageous for the United States than it now is.

The Commission believes LDA policy should rest on the following principles:

- Clear goals and priorities;
- Systematic and comprehensible organization of LDA categories;
- Timeliness, efficiency, and flexibility in its implementation;
- Compliance with the conditions for entry and exit (and effective mechanisms to monitor and enforce this compliance);
- Credible and realistic policies governing transition from LDA to permanent immigration status;
- Protection of U.S. workers from unfair competition and of foreign workers from exploitation and abuse; and
- Appropriate attention to LDA provisions in trade negotiations to ensure future immigration reforms are not unknowingly foreclosed.

The Commission recommends a reorganization of the visa categories for limited duration stays in the United States to make them more coherent and understandable. The Commission recommends that the current proliferation of visa categories be restructured into five broad groups: official representatives; foreign workers; students; short-term visitors; and transitional family members. This reorganization reflects such shared characteristics of different visa categories as entry for like reasons, similarity in testing for eligibility, and similar duration of stay in the United States.

The definitions and objectives of the five limited duration visa classifications would be:[6]

- **Official representatives** are diplomats, representatives of or to international organizations, representatives of NATO or NATO forces, and their accompanying family members. The objective of this category is to permit the United States to admit temporarily individuals who represent their governments or international organizations.

- **Short-term visitors** come to the United States for commercial or personal purposes. In 1995 alone, millions of inbound visitors from other countries spent $76 billion on travel to and in the United States (on U.S. flag carriers, lodging, food, gifts, and entertainment).

- **Foreign workers** are those who are coming to perform necessary services for prescribed periods of time, at the expiration of which they must either return to their home countries or, if an employer or family member petitions successfully, adjust to permanent residence. This category would serve the labor needs demonstrated by U.S. businesses, with appropriate provisions to protect U.S. workers from unfair competition.

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[6] The current system includes the J visa for cultural exchange, which is used for a variety of purposes, ranging from short-term visits to study and work. The workers include scholars and researchers, camp counselors, *au pairs*, and various others. Some work activities under the J visa demonstrate a clear cultural or education exchange; other work activities appear only tangentially related to the program's original purposes. Protection of U.S. workers by labor market tests and standards should apply to the latter group in the same manner as similarly situated temporary workers in other LDA categories. The Department of State should assess how better to fulfill the purpose of the Mutual Educational and Cultural Exchange Act of 1961 [Fulbright-Hays Act]. Such an analysis is particularly timely in light of the merger now being implemented between the Department of State and the United States Information Agency, which is responsible for administering the J visa.

- **Students** are persons who are in the United States for the purpose of acquiring either academic or practical knowledge of a subject matter. This category has four major goals: to provide foreign nationals with opportunities to obtain knowledge they can take back to their home countries; to give U.S. schools access to a global pool of talented students; to permit the sharing of U.S. values and institutions with individuals from other countries; and to enhance the education of U.S. students by exposing them to foreign students and their cultures.

- **Transitional family members** include fiancé(e)s of U.S. citizens. These individuals differ from other LDAs because they are processed for immigrant status, although they do not receive such status until they marry in the U.S. and adjust. The Commission believes another category of transitional family members should be added: spouses of U.S. citizens whose weddings occur overseas but who subsequently come to the U.S. to reside.

Short-Term Visitors

The Commission recommends that the current visa waiver pilot program for short-term business and tourist visits be made permanent upon the implementation of an entry-exit control system capable of measuring overstay rates. A permanent visa waiver system requires appropriate provisions to expand the number of participating countries and clear and timely means for removing those countries that fail to meet the high standards reserved for this privilege. Congress should extend the pilot three years while the control system is implemented.

Foreign Workers

Each year, more foreign workers enter the United States as LDAs for temporary work than enter as skill-based immigrants. In FY 1996, the Department of State issued almost 278,000 limited duration worker visas, including those for spouses and children. By contrast, only 118,000 immigrant visa issuances and domestic adjustments of status in worker categories were recorded in FY 1996, far less than the legislated limit of 140,000.

The Commission recommends that the limited duration admission classification for foreign workers include three principal categories: those who, for significant and specific policy reasons, should be exempt by law from labor market protection standards; those whose admission is governed by treaty obligations; and those whose admission must adhere to specified labor market protection standards. Under this recommendation, LDA worker categories are organized around the same principles that guide permanent worker categories. Accordingly, the Commission proposes different subcategories with labor market protection standards commensurate with the risks to U.S. workers we believe are posed by the foreign workers.

- **Those exempt by law from labor market protection standards** because their admission will generate substantial economic growth and/or significantly enhance U.S. intellectual and cultural strength and pose little potential for undermining the employment prospects and remuneration of U.S. workers. These include:

Individuals of extraordinary ability in the sciences, arts, education, business, or athletics, demonstrated through sustained national or international acclaim and recognized for extraordinary achievements in their field of expertise.

Managers and executives of international businesses. The global competitiveness of U.S. businesses is enhanced by the capacity of multinational corporations to move their senior staff around the world as needed.

Professors, researchers and scholars whose salary or other compensation is paid by their home government, home institution, or the U.S. government in a special program for foreign professors, researchers, and scholars.

Religious workers, including ministers of religion and professionals and other workers employed by religious nonprofit organizations in the U.S. to perform religious vocations and religious occupations.

Members of the foreign media admitted under reciprocal agreements. The U.S. benefits from the presence of members of the foreign media who help people in their countries understand events in the United States. Just as we would not want our media to be overly regulated by labor policies of foreign governments, the United States extends the same courtesy to foreign journalists working in the U.S.

- **Foreign workers whose admission is subject to treaty obligations.** This includes treaty traders, treaty investors, and other workers entering under specific treaties between the U.S. and the foreign nation of which the alien is a citizen or national. Under the provisions of NAFTA, for example, Canadian professionals are not subject to numerical limits or labor market testing; Mexican professionals continue to be subject to labor market tests, but will be exempt from numerical limits in 2003.

- **Foreign workers subject by law to labor market protection standards**. These are principally:

  Professionals and other workers who are sought by employers because of their highly-specialized skills or knowledge and/or extensive experience. Included in this category are employees of international businesses who have specialized knowledge but are not managers or executives.

  Trainees admitted to the United States for practical, on-the-job training in a variety of occupations. Trainees work in U.S. institutions as an integral part of their training program.

  Artists, musicians, entertainers, athletes, fashion models, and participants in international cultural groups that share the history, culture, and traditions of their country.

  Lesser-skilled and unskilled workers coming for seasonal or other short-term employment. Such worker programs warrant strict review, as described below. The Commission remains opposed to implementation of a large-scale program for temporary admission of lesser-skilled and unskilled workers.

The Commission recommends that the labor market tests used in admitting temporary workers in this category be commensurate with the skill level and experience of the worker.

- **Employers requesting the admission of temporary workers with highly-specialized skills or extensive experience should meet specific requirements**. Admission should be contingent on an attestation that:

The employer will pay the greater of actual or prevailing wage and fringe benefits paid to other employees with similar experience and qualifications for the specific employment in question. Actual wage rates should be defined in a simple and straightforward manner.

The employer has posted notice of the hire, informed coworkers at the principal place of business at which the LDA worker is employed, and provided a copy of the attestation to the LDA worker.

The employer has paid a reasonable user fee that will be dedicated to facilitating the processing of applications and the costs of auditing compliance with all requirements.

There is no strike or lockout in the course of a labor dispute involving the occupational classification at the place of employment.

The employer has not dismissed, except for cause, or otherwise displaced workers in the specific job for which the alien worker is hired during the previous six months. Further, the employer will not displace or lay off, except for cause, U.S. workers in the specific job during the ninety-day period following the filing of an application or the ninety-day periods preceding or following the filing of any visa petition supported by the application.

The employer will provide working conditions for such temporary workers that are comparable to those provided to similarly situated U.S. workers.

- **Certain at-risk employers of skilled workers (described below) should be required to attest to having taken signifi-**

cant steps—for example, recruitment or training—to employ U.S. workers in the jobs for which they are recruiting foreign workers. We do not recommend, however, that current labor certification processes be used to document significant efforts to recruit. These procedures are costly, time consuming, and ultimately ineffective in protecting highly-skilled U.S. workers.

- **Employers requesting the admission of lesser-skilled workers should be required to meet a stricter labor market protection test.** Such employers should continue to be required to demonstrate that they have sought, but were unable to find, sufficient American workers prepared to work under favorable wages, benefits, and working conditions. They also should be required to specify the plans they are taking to recruit and retain U.S. workers, as well as their plans to reduce dependence on foreign labor through hiring of U.S. workers or other means. Employers should continue to be required to pay the highest of prevailing, minimum, or adverse wage rates, provide return transportation, and offer decent housing, health care, and other benefits appropriate for seasonal employees.

The Commission recommends that categories of employers who are at special risk of violating labor market protection standards —regardless of the education, skill, or experience level of its employees—be required to obtain regular, independently-conducted audits of their compliance with the attestations made about labor market protection standards, with the results of such audit being submitted for Department of Labor review. Certain businesses, as described below, pose greater risk than others of displacing U.S. workers and/or exploiting foreign workers. The risk factors that should be considered in determining whether regular audit requirements must apply include:

- **The employer's extensive use of temporary foreign workers.** Extensive use can be defined by the percentage of the employer's workforce that is comprised of LDA workers. It also can be measured by the duration and frequency of the employer's use of temporary foreign workers.

- **The employer's history of employing temporary foreign workers.** Those employers with a history of serious violations of regular labor market protection standards or of specific labor standards related to the employment of LDA workers should be considered as at risk for future violations.

- **The employer's status as a job contracting or employment agency providing temporary foreign labor to other employers.** Risk of labor violations increases as responsibility is divided between a primary and secondary employer.

To ensure adequate protection of labor market standards, such employers should be required to submit an independent audit of their compliance with all statements attested to in their application. The independent audits should be done by recognized accounting firms that have the demonstrated capacity to determine, for example, that wages and fringe benefits were provided as promised in the attestation and conformed to the actual or prevailing wages and fringe benefits provided to similarly situated U.S. workers.

The Commission recommends enhanced monitoring of and enforcement against fraudulent applications and postadmission violations of labor market protection standards. To function effectively, both the exempt and nonexempt temporary worker programs must provide expeditious access to needed labor. The Commission's recommendations build on the current system of employer attestations that receive expeditious preapproval review but are subject to postapproval enforcement actions against violators. More specifically, the Commission recommends:

- **Allocating increased staff and resources to the agencies responsible for adjudicating applications for admission and monitoring and taking appropriate enforcement action against fraudulent applications and violations of labor market protection standards.** Increased costs required for more efficient adjudication of applications can be covered by applicant fees. However, additional costs incurred for more effective investigations of compliance with labor market standards will require appropriated funds.

- **Barring the use of LDA workers by any employer who has been found to have committed willful and serious labor standards violations with respect to the employment of LDA workers. Further, upon the recommendation of any federal, state, or local tax agency, barring the use of LDA workers by any employer who has been found to have committed willful and serious payroll tax violations with respect to LDA workers.** The law currently provides for such debarment for failure to meet labor condition attestation provisions or misrepresentation of material facts on the application. Implementation of this recommendation would enable penalties to be assessed for serious labor standards violations that are not also violations of the attestations.

- **Developing an enforcement strategy to reduce evasion of the LDA labor market protection standards through contractors.** U.S. businesses' growth in contracting-out functions has raised questions of employment relationships and ultimate liability for employment-related violations, including those related to temporary foreign workers. A uniform policy for dealing with these situations is desirable for the enforcement agencies involved, as well as for employers, contractors, and workers.

Unlawful immigration can be controlled consistent with our traditions, civil rights, and civil liberties.

CURBING UNLAWFUL MIGRATION

In its first interim report to Congress , the Commission recommended a comprehensive strategy to curb unlawful migration into the United States through prevention and removal.[7] Despite the additional resources, new policies, and often innovative strategies adopted during the past few years, illegal migration continues to be a problem. The Commission continues to believe that unlawful immigration can be curtailed consistent with our traditions, civil rights, and civil liberties. As a nation committed to the rule of law, our immigration policies must conform to the highest standards of integrity and efficiency in the enforcement of the law. We must also respect due process.

TOP TEN COUNTRIES OF ORIGIN OF UNLAWFUL MIGRANTS*

Mexico	**2,700,000**
El Salvador	**335,000**
Guatemala	**165,000**
Canada	**120,000**
Haiti	**105,000**
Philippines	**95,000**
Honduras	**90,000**
Poland	**70,000**
Nicaragua	**70,000**
Bahamas	**70,000**

* 1996 estimates
Source: INS. 1997. *1995 Statistical Yearbook of Immigration and Naturalization Service.* Washington, DC: Government Printing Office.

Deterrence Strategies

The Commission reiterates its 1994 recommendations supporting a comprehensive strategy to deter illegal migration. More specifically, the Commission continues to support implementation of the following deterrence strategies:

- **An effective border management policy that accomplishes the twin goals of preventing illegal entries and facilitating legal ones.** New resources for additional Border Patrol officers, inspectors, and operational support, combined with such new strategies as operations "Hold the Line," "Gatekeeper," and "Safeguard," have improved significantly the management of the border where they are deployed. The very success of these new efforts demonstrates that to gain full control, the same level of resources and prevention strategies must be deployed at all points on the border where significant violations of U.S. immigration law are likely to occur.

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[7] For a full explanation of the Commission's recommendations see: *U.S. Immigration Policy: Restoring Credibility*, 1994.

- **Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration.** Economic opportunity and the prospect of employment remain the most important draw for illegal migration to this country. Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards. The Commission supports implementation of pilot programs to test what we believe is the most promising option for verifying work authorization: a computerized registry based on the social security number.*

- **Restricting eligibility of illegal aliens for publicly-funded services or assistance, except those made available on an emergency basis or for similar compelling reasons to protect public health and safety or to conform to constitutional requirements.** Although public benefit programs do not appear to be a major magnet for illegal migrants, it is important that U.S. benefit eligibility policies send the same message as immigration policy: Illegal aliens should not be here and, therefore, should not receive assistance, except in unusual circumstances. The Commission recommended drawing a line between illegal aliens and lawfully resident legal immigrants with regard to benefits eligibility, in part to reinforce this message. We continue to believe that this demarcation between legal and illegal aliens makes sense. The Commission urges the Congress to reconsider the changes in welfare policy enacted in 1996 that blur the distinctions between legal and illegal aliens by treating them similarly for the purposes of many public benefit programs.

TOP TEN STATES OF RESIDENCE OF UNLAWFUL MIGRANTS*

California	2,000,000
Texas	700,000
New York	540,000
Florida	350,000
Illinois	290,000
New Jersey	135,000
Arizona	115,000
Massachusetts	85,000
Virginia	55,000
Washington	52,000

* 1996 estimates
Source: INS. 1997. *1995 Statistical Yearbook of Immigration and Naturalization Service*. Washington, DC: Government Printing Office.

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* The Concurring Statement of Commissioners Leiden and Merced can be found in the Commission's 1994 report.

- **Strategies for addressing the causes of unlawful migration in source countries.** An effective strategy to curb unauthorized movements includes cooperative efforts with source countries to address the push factors that cause people to seek new lives in the United States. The Commission continues to urge the United States government to give priority in its foreign policy and international economic policy to long-term reduction in the causes of unauthorized migration.

- **Mechanisms to respond in a timely, effective, and humane manner to migration emergencies.** A credible immigration policy requires the ability to respond effectively and humanely to migration emergencies in which large numbers of people seek entry into the United States. These emergencies generally include *bona fide* refugees, other individuals with need for protection, and persons seeking a better economic life in the U.S. Failure to act appropriately and in a timely manner to determine who should be admitted and who should be returned can have profound humanitarian consequences. Further, an uncontrolled emergency can overwhelm resources and create serious problems that far outlast the emergency.[9]

Removals

A credible immigration system requires the effective and timely removal of aliens who can be determined through constitutionally-sound procedures to have no right to remain in the United States. If unlawful aliens believe that they can remain indefinitely once they are within our national borders, there will be increased incentives to try to enter or remain illegally.

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[9] For a fuller discussion of the Commission's recommendation on mass migration emergencies, see *U.S. Refugee Policy: Taking Leadership*, 1997.

Our current removal system does not work. Hundreds of thousands of aliens with final removal orders remain in the U.S. The system's ineffectiveness results from a fragmented, uncoordinated approach, rather than flawed legal procedures. The Executive Branch does not have the capacity, resources, or strategy to detain aliens likely to abscond, to monitor the whereabouts of released aliens, or to remove them.

The Commission urges immediate reforms to improve management of the removal system and ensure that aliens with final orders of deportation, exclusion, or removal are indeed removed from the United States. Establishing a more effective removal system requires changes in the management of the removal process. More specifically, the Commission recommends:

- **Establishing priorities and numerical targets for the removal of criminal *and* noncriminal aliens.** The Commission encourages headquarters, regional, and local immigration enforcement officials to set these priorities and numerical goals.

- **Local oversight and accountability for the development and implementation of plans to coordinate apprehensions, detention, hearings, removal, and the prevention of reentry.** With guidance on priorities, local managers in charge of the removal system would be responsible for allocation of resources to ensure that aliens in the prioritized categories are placed in the system and ultimately removed. Local managers also would be responsible and accountable for identifying effective deterrents that reduce the likelihood that removed aliens would attempt to reenter the U.S.

- **Continued attention to improved means for identifying and removing criminal aliens with a final order of deportation.**

The Commission reiterates the importance of removing criminal aliens as a top priority. Our recommendation regarding the importance of removing noncriminal aliens with final orders is not intended to shift the attention of the removal system away from this priority. Rather, both criminal and noncriminal aliens must be removed to protect public safety (in the case of criminals) and to send a deterrent message (to *all* who have no permission to be here).

- **Legal rights and representation.** The Executive Branch should be authorized to develop, provide, and fund programs and services that educate aliens about their legal rights and immigration proceedings. Such programs also should encourage and facilitate legal representation where to do so would be beneficial to the system and the administration of justice. Particular attention should be focused on aliens in detention where release or removal can be expedited through such representation. Under this approach, the alien would not have a right to appointed counsel, but the government could fund services to address some of the barriers to representation.

- **Prosecutorial discretion to determine whether to proceed with cases.** Guidelines on the use of prosecutorial discretion should be developed, local Trial Attorneys trained, support staff provided, and discretion exercised with the goal of establishing a more efficient and rational hearing system. Trial attorneys should focus their efforts on trying cases that are likely to result in the removal of the alien upon completion of the proceedings.

- **Strategic use of detention and release decisions.** Detention space, always in limited supply, is in greater demand as the government has focused more on the removal of criminal aliens and as Congress mandates more categories to be detained. Detention needs to be used more strategically if removals are to be accomplished. Alternatives to detention should be developed so that detention space is used efficiently and effectively. The Commission fully supports the three-year pilot program, created with and implemented by the Vera Institute, to help define effective alternatives to detention for specific populations.

- **Improved detention conditions and monitoring.** Detention cannot be used effectively unless the conditions of detention are humane and detainees are free from physical abuse and harassment by guards. We have no doubt that appropriate criteria for all facilities can be promulgated, based on sound governmental judgment and consultation with concerned nongovernmental organizations. But most importantly, a system to monitor facilities on a regular basis must be developed. Inspections must occur more than once annually.

  Further, the Commission recommends that the Department of Justice consider placing administrative responsibility for operating detention centers with the Bureau of Prisons or U.S. Marshals Service. An immigration enforcement agency should not be shouldered with such a significant responsibility that is not part of its fundamental mission or expertise.

- **Improved data systems.** Current data systems are unable to link an apprehension to its final disposition (e.g., removal, adjustment of status). This significantly limits the use of apprehension and removal data for analytical purposes. The Commission urges development of data systems that link apprehensions and removals and provide statistics on individuals.

- **The redesigned removal system should be managed initially by a Last-In-First-Out [LIFO] strategy to demonstrate the credibility of the system.** Once a coherent system is organized and appropriate resources are assigned to removing deportable aliens—not simply to put aliens through proceedings—removals should proceed in a Last-In-First-Out mode. In this way, the government can send a credible deterrent message to failed asylum seekers, visa overstayers, users of counterfeit documents, and unauthorized workers, that their presence in the United States will not be tolerated. Such a well-organized system can establish control over the current caseload and quickly prioritize the backlog for enforcement purposes. The deterrent effect of LIFO has been shown in the asylum system where new procedures were adopted in a LIFO mode.

The Commission urges Congress to clarify that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA] and the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA] do not apply retroactively to cases pending when the new policies and procedures went into effect. As a matter of policy, the Commission believes that retroactive application of new immigration laws undermines the effectiveness and credibility of the immigration system. Applying newly-enacted laws or rules in an immigration proceeding that has already commenced results in inefficiency in the administration of the immigration laws. It also can raise troubling issues of fairness. Finally, it invites confusion, adds uncertainty, and fosters a lack of trust and confidence in the rule of law.

ACHIEVING IMMIGRATION POLICY GOALS

INTRODUCTION

Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immigration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

An effective immigration system requires both credible policy and sound management.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, however, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address long-standing problems. A recent General Accounting Office [GAO] report documented improvements—including, for example, a more strategic approach to the formulation of immigration enforcement programs. The Commission has seen progress in many management areas—for example, more effective border management, increased numbers of criminal alien removals, and asylum reform that has deterred abusive claims while protecting *bona fide* refugees. Nevertheless, problems remain in the operation of the U.S. immigration and naturalization system. Further improvements must be made if it is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

Current U.S. Immigration System

FUNCTION AGENCY	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE				
Immigration & Naturalization Service	✓	✓	✓	✓
Executive Office for Immigration Review				✓
DEPARTMENT OF STATE				
Consular Affairs		✓		
Bureau for Population, Refugees & Migration		✓		
Board of Appellate Review*				✓
DEPARTMENT OF LABOR				
Employment Standards Administration			✓	
Employment Training Administration		✓		
Board of Alien Labor Certification Appeals				✓

*For a limited set of nationality- and citizenship-related matters.

STRUCTURAL REFORM

The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and consolidation of administrative appeals. The immigration system is one of the most

Proposed U.S. Immigration System

FUNCTION AGENCY	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE Bureau for Immigration Enforcement	✓			
DEPARTMENT OF STATE Undersecretary for Citizenship, Immigration, and Refugee Admissions		✓		
DEPARTMENT OF LABOR Employment Standards Administration			✓	
AGENCY FOR IMMIGRATION REVIEW				✓

complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.

Mission Overload. Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between Congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforce-

Proposed Restructuring of the Immigration System

DEPARTMENT OF JUSTICE	DEPARTMENT OF STATE	DEPARTMENT OF LABOR	INDEPENDENT AGENCY
BUREAU FOR IMMIGRATION ENFORCEMENT	UNDERSECRETARY FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE ADMISSIONS	EMPLOYMENT STANDARDS ADMINISTRATION	AGENCY FOR IMMIGRATION REVIEW
Immigration enforcement at the border and in the interior of the United States	Adjudication of eligibility for immigration, refugee and naturalization applications	Enforcement of immigration-related employment standards	Administrative review of all authorized immigration-related appeals

ment requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses.

Diffusion of Responsibilities Among Agencies. Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. For example, responsibility for making decisions on skill-based immigrant and LDA applications is dispersed among the Department of Labor [DOL], the Department of Justice's [DOJ] Immigration and Naturalization Service [INS], and the Department of State [DOS]. Responsibility for investigating employer compliance with immigration-related labor standards is shared by INS and DOL.

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs. After examining the full range of options, the Commission concludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below, ***the Commission recommends a restructuring of the immigration system's four principal operations as follows:***[20]

1. ***Immigration enforcement at the border and in the interior of the United States in a Bureau for Immigration Enforcement at the Department of Justice;***

2. ***Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of an Undersecretary for Citizenship, Immigration, and Refugee Admissions;***

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[20] See Appendix for Commissioner Leiden's concurring statement.

3. *Enforcement of immigration-related employment standards in the Department of Labor; and*

4. *Appeals of administrative decisions including hearings on removal, in an independent body, the Agency for Immigration Review.*

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions.

Bureau for Immigration Enforcement (DOJ)

The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement at the Department of Justice. The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing, and evaluating all U.S. immigration enforcement activities both within the United States and overseas.

The importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the Department of Justice.

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

Uniformed Enforcement Officers. The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement.

Investigators. The Commission believes investigations will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final enforceable orders of removal.

Intelligence. The Bureau will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators.

Assets Forfeiture Unit. As with the other DOJ enforcement agencies, the Bureau will have an Assets Forfeiture unit.

Pre- and Post-Trial "Probation" Officers. "Probation" functions are not now performed consistently or effectively, but the Commission believes this function is essential to more strategic use of detention space. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

Trial Attorneys/Prosecutors. The Commission believes that the Trial Attorneys, who in effect are the Government's immigration prosecutors, should be vested with, *and should utilize,* an important tool possessed by their criminal counterparts: prosecutorial discretion.

Field Offices. The new agency would implement its programs through a series of field offices that are structured to address comprehensively the immigration enforcement challenges of the particular locality. As the location of these offices should be driven by enforcement priorities, they are likely to be in different places than current district offices. Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices.

A more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of immigration and citizenship benefits.

Citizenship, Immigration, and Refugee Admissions (DOS)

The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities. At present, three separate agencies—the INS, the Department of State, and the Department of Labor—play broad roles in adjudicating applications for legal immigration, limited duration admissions, refugee admissions, asylum, and/or citizenship. The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, will result in faster and better determinations of these benefits. As in the current system, these services would be funded through fees paid by applicants and retained by the benefits offices for delivery of the services.

The Commission considered the advantages and disadvantages of consolidating responsibility in the Department of Justice and in the Department of State, the two agencies that already have the most significant immigration, refugee, and citizenship duties. Bearing in mind the dual problems the Commission identified in the current structures—mission overload and fragmentation of responsibility, we concluded that consolidation in the Department of State makes greater sense than creation of a new, separate benefits agency within the Department of Justice.

Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the Department of State. The Department of State, however, already has a domestic presence and an adjudication capability. It issues one-half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost 6 million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities.

Consolidating responsibility requires some changes in the way the Department of State administers its immigration responsibilities, which we believe will strengthen the adjudication function. Because immigration has both foreign and domestic policy import, the Department of State will need to develop mechanisms for consultation with groups representing a broad range of views and interests regarding immigration. Such consultations already occur in the refugee program. The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and LDA applications may be appealed, but no appeal is available on consular decisions. The Commission believes that immigrant and certain limited duration admission visas with a U.S. petitioner should be subject to independent administrative appeal (see below).

The Undersecretary, who would have direct access to the Secretary of State, would be responsible for domestic and overseas immigration, citizenship, and refugee functions. These include adjudication of applications for naturalization, determinations of citizenship overseas, all immigrant and limited duration admission petitions, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Overseas citizenship services would continue to be provided by consular officers abroad. The agency would have enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

A Bureau of Immigration Affairs would focus on the immigration process, as noted above, as well as on LDA processing. In addition to its existing overseas work, the Immigration Affairs Bureau would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Immigration Affairs Bureau also would staff immigration information and adjudication offices in areas with immigrant concentrations.

A Bureau of Refugee Admissions and Asylum Affairs would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for overseas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor. This would integrate the key governmental offices in one of our most important and historic international activities.

A Bureau of Citizenship and Passport Affairs would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship functions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located with local immigration services.

Overseas citizen services would continue to be handled within the newly consolidated organization. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad.

Quality Assurance Offices would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. The Commission believes that quality decisions require some form of internal supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses in the current system, such as those recently identified in the naturalization process.

With respect to the domestic field structure for implementing these programs, the Regional Service Centers [RSCs] and National Visa Center [NVC] would continue to be the locus of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the RSCs to the NVC when the applicant for admission is overseas. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations that the current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

The Department of Labor is the best equipped federal agency to regulate and investigate employer compliance with standards intended to protect U.S. workers.

Immigration-Related Employment Standards (DOL)

The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor. These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for the legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the best equipped federal agency to regulate and investigate *employer compliance* with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited —

U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Enforcement of compliance with these requirements currently lies within the responsibility of both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA] Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these functions in conjunction with their other worksite labor standards activities.

Sanctions Against Employers Who Fail to Verify Work Authorization. The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by DOL. DOL already conducts many of these investigations. However, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.[11]

Enforcement of Skill-Based Immigrant and Limited Duration Admissions Requirements. The Commission believes an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers. To prevent abuse of an expedited system, an effective postadmission enforcement scheme is necessary.

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[11] At present, DOL investigates employer compliance with the requirement to check documentation and fill out the I-9 form, while INS does this paperwork review and investigations of knowing hire of illegal aliens. The latter investigations are hampered, however, by the absence of an effective verification process and proliferation of fraudulent documents.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of significant administrative fines as well as barring egregious or repeat violators from petitioning for the admission of permanent or temporary workers.

Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

Agency for Immigration Review

The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch. The Commission believes that a system of formal administrative review of immigration-related decisions—following internal supervisory review within the initial adjudicating body—is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law both in individual cases and across the system as a whole.

The review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

Hence, the Commission recommends that the review function be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by several existing review bodies, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office, the DOL Board of Alien Labor Certification Appeals, and the DOS Board of Appellate Review. It also would have some new responsibilities.

This reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, but would have no say in the substantive decisions reached on cases considered by any division or component within the agency.

There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration courts located around the country. The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now-sitting Immigration Judges.

The reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications—from tourist visas to naturalization and the issuance of passports—not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments.

The administrative appeals agency also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review. The Commission believes that consular decisions denying or revoking visas in specified visa categories—i.e., all immigrant visas and those LDA categories where there is a petitioner in the United States who is seeking the admission of the visa applicant—should be subject to formal administrative review. The visa applicant would have no right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

MANAGEMENT REFORM

The Commission urges the federal government to make needed reforms to improve management of the immigration system. While the Commission-recommended structural changes will help improve implementation of U.S. policy, certain management reforms also must be adopted if the restructured agencies responsible for immigration matters are to be effective in performing their functions. Structural reforms will not by themselves solve some of the management problems that have persisted in the immigration agencies.

More specifically, the Commission recommends:

- **Setting More Manageable and Fully-Funded Priorities**. The Commission urges Congress and the Executive Branch to establish and then appropriately fund a more manageable set of immigration-related priorities. More manageable means fewer objectives, but also a set of more integrated priorities, more realistically-achievable short-term and long-term goals, and greater numerical specificity on expected annual outcomes to which agencies could be held accountable.

- **Developing More Fully the Capacity for Policy Development, Planning, Monitoring, and Evaluation.** Each department with immigration-related responsibilities needs to perform a wide range of policy functions, including, but not limited to, long-range and strategic policy planning, interagency policy integration, policy review, policy coordination, priority setting, data collection and analysis, budget formulation, decisionmaking, and accountability. The Domestic Policy Council and the National Security Council in the White House can also play an important role in coordinating policy development across departments.

- **Improving Systems of Accountability.** Staff who are responsible for immigration programs should be held accountable for the results of their activities. Systems should be developed to reward or sanction managers and staff on the basis of their performance.

- **Recruiting and Training Managers.** The Commission believes enhancements must be made in the recruitment and training of managers. As immigration-related agencies grow and mandated responsibilities increase or evolve, closer attention should be paid to improving the skills and managerial capacity of immigration staff at all levels to ensure more efficient and effective use of allocated resources.

- **Strengthening Customer Service Orientation.** The Commission urges increased attention to instilling a customer-service ethic in staff, particularly those responsible for adjudication of applications for benefits.

- **Using Fees for Immigration Services More Effectively.** The Commission supports the imposition of user fees, but emphasizes: (1) that the fees should reflect true costs; (2) that the agencies collecting the fees should retain them and use them to cover the costs of those services for which the fees are levied; (3) that those paying fees should expect to be treated to timely and courteous service; and (4) that maximum flexibility should be given to agencies to expand or contract their response expeditiously as applications increase or decrease.

The Commission reiterates its 1994 recommendations concerning the need for improvements in immigration data collection, coordination, analysis, and dissemination. Although some progress has been made, much more needs to be done to collect data that will inform responsible immigration policymaking. The Commission believes that each agency involved in immigration must establish a system and develop a strategy for the collection, interagency coordination, analysis, dissemination, and use of reliable data.

Further, the Commission urges the federal government to support continuing research and analysis on the implementation and impact of immigration policy. In particular, the federal government should support data collection and analysis in the following areas: longitudinal surveys on the experiences and impact of immigrants; on the experiences and impact of foreign students and foreign workers admitted for limited duration stays; and on the patterns and impacts of unlawful migration.

CONCLUSION

This report concludes the work of the U.S. Commission on Immigration Reform. Together with our three interim reports, this final set of recommendations provides a framework for immigration and immigrant policy to serve our national interests today and in the years to come. The report outlines reforms that will enhance the benefits of legal immigration while mitigating potential harms, curb unlawful migration to this country, and structure and manage our immigration system to achieve all these goals. Most importantly, this report renews our call for a strong commitment to Americanization, the process by which immigrants become part of our community and we learn and adapt to their presence. Becoming an American is the theme of this report. Living up to American values and ideals is the challenge for us all.

INTRODUCTION

Immigration and immigrant policy is about immigrants, their families and the rest of us. It is about the meaning of American nationality and the foundation of national unity. It is about uniting persons from all over the world in a common civic culture.

The process of becoming an American is most simply called "Americanization," which must always be a two-way street. All Americans, not just immigrants, should understand the importance of our shared civic culture to our national community. This final report of the U.S. Commission on Immigration Reform makes recommendations to further the goals of Americanization by setting out *immigrant* policies to help orient immigrants and their new communities, to improve educational programs that help immigrants and their children learn English and civics, and to reinforce the integrity of the naturalization process through which immigrants become U.S. citizens.

This report also makes recommendations regarding *immigration* policy. It reiterates and updates the conclusions we reached in three interim reports—on unlawful migration, legal immigration, and refugee and asylum policy—and makes additional recommendations for reforming immigration policies. Further, in this report, the Commission recommends ways to improve the structure and management of the federal agencies responsible for achieving the goals of immigration policy. It is our hope that this final report *Becoming An American: Immigration and Immigrant Policy,* along with our three interim reports, constitutes a full response to the work assigned the Commission by Congress: to assess the national interest in immigration and report how it can best be achieved.

MANDATE AND METHODS

Public Law 101-649, the Immigration Act of 1990 [IMMACT], established this Commission to review and evaluate the impact of immigration policy. More specifically, the Commission must report on immigration's impact on: the need for labor and skills; employment and other aspects of the economy; social, demographic, and environmental conditions; and the foreign policy and national security interests of the United States. The Commission engaged in a wide variety of fact-finding activities to fulfill this mandate. Site visits were conducted throughout the United States. Commission members visited immigrant and refugee communities in California, Texas, Florida, New York, Massachusetts, Illinois, Arizona, Washington, Kansas, Virginia, Washington, DC, Puerto Rico and the Commonwealth of the Northern Mariana Islands. Some Commission and staff members also visited such major source countries as Mexico, the Dominican Republic, Cuba, Haiti, and the Philippines. To increase our understanding of international refugee policy issues, members and staff of the Commission visited Bosnia, Croatia, Germany, and Kenya, and consulted with Geneva-based officials from the U.N. High Commission for Refugees and the International Organization for Migration. We held more than forty public hearings, consultations with government and private sector officials, and expert roundtable discussions.

TODAY'S IMMIGRANTS

The effects of immigration are numerous, complex, and varied. Immigrants contribute in many ways to the United States: to its vibrant and diverse communities; to its lively and participatory democracy; to its vital intellectual and cultural life; to its renowned job-creating entrepreneurship and marketplaces; and to its family values and hard-work ethic. However, there are costs as well as

Immigrant Admissions by Major Category: FYs 1992-1996

Category of Admission	1992	1993	1994	1995	1996
TOTAL	810,635	880,014	798,394	716,194	909,959
SUBJECT TO THE NUMERICAL CAP	655,541	719,701	662,029	593,234	771,604
FAMILY-BASED IMMIGRANTS	**502,995**	**539,209**	**497,682**	**460,653**	**595,540**
Immediate Relatives of U.S. citizens	235,484	255,059	249,764	220,360	350,192
Spouses and children	170,720	192,631	193,394	171,978	283,592
Parents	64,764	62,428	56,370	48,382	66,600
Children born abroad to alien residents	2,116	2,030	1,883	1,894	1,658
Family-sponsored immigrants	213,123	226,776	211,961	238,122	293,751
Unmarried sons/daughters of U.S. citizens	12,486	12,819	13,181	15,182	20,885
Spouses and children of LPRs	90,486	98,604	88,673	110,960	145,990
Sons and daughters of LPRs	27,761	29,704	26,327	33,575	36,559
Married sons/daughters of U.S. citizens	22,195	23,385	22,191	20,876	25,420
Siblings of U.S. citizens	60,195	62,264	61,589	57,529	64,897
Legalization dependents	52,272	55,344	34,074	277	184
EMPLOYMENT-BASED IMMIGRANTS	**116,198**	**147,012**	**123,291**	**85,336**	**117,346**
Priority workers	5,456	21,114	21,053	17,339	27,469
Professionals w/ adv. deg. or of advanced ability	58,401	29,468	14,432	10,475	18,436
Skilled, professionals, other workers, (CSPA)	47,568	87,689	76,956	50,245	62,674
Skilled, professionals, other workers	47,568	60,774	55,659	46,032	62,273
Chinese Student Protection Act (CSPA)	X	26,915	21,297	4,213	401
Special immigrants	4,063	8,158	10,406	6,737	7,831
Investors	59	583	444	540	936
Professionals or highly skilled (Old 3rd)	340	X	X	X	X
Needed skilled or unskilled workers (Old 6th)	311	X	X	X	X
DIVERSITY PROGRAMS	**36,348**	**33,480**	**41,056**	**47,245**	**58,718**
Diversity permanent	X	X	X	40,301	58,174
Diversity transition	33,911	33,468	41,056	6,994	544
Nationals of adversely affected countries	1,557	10	X	X	X
Natives of underrepresented countries	880	2	X	X	X
NOT SUBJECT TO THE NUMERICAL CAP	**155,094**	**160,313**	**136,365**	**122,960**	**138,323**
Amerasians	17,253	11,116	2,822	939	954
Cuban/Haitian Entrants	99	62	47	42	29
Parolees, Soviet and Indochinese	13,661	15,772	8,253	3,120	2,283
Refugees and Asylees	117,037	127,343	121,434	114,632	128,367
Refugee adjustments	106,379	115,539	115,451	106,795	118,345
Asylee adjustments	10,658	11,804	5,983	7,837	10,022
Registered Nurses and their families	3,572	2,178	304	69	16
Registry, entered prior to 1/1/72	1,293	938	667	466	356
Other	2,179	2,904	2,838	3,692	6,318

Note: X = Not Applicable. Excludes persons granted LPR status under the provisions of the Immigration Reform and Control Act of 1986.
Source: Immigration and Naturalization Service, Statistics Division

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benefits from today's immigration. Those workers most at risk in our restructuring economy—low-skilled workers in production and service jobs—are those who directly compete with today's low-skilled immigrants. Further, immigration presents special challenges to certain states and local communities that disproportionately bear the fiscal and other costs of incorporating newcomers.

Characteristics of Immigrants

In FY 1996 (the last year for which data are available), more than 900,000 immigrants came to the United States from 206 nations, for a variety of reasons and with a diverse set of personal characteristics. Not surprisingly, the characteristics of immigrants from different sending countries vary, as do their effects on the U.S. There are also differences between immigrants admitted under different classes of admission. These differences generally reflect the statutory provisions that guide admissions. [See Appendix for description of IMMACT's more specific provisions and its effects.]

1996

Top Ten Countries of Origin of Legal Immigrants

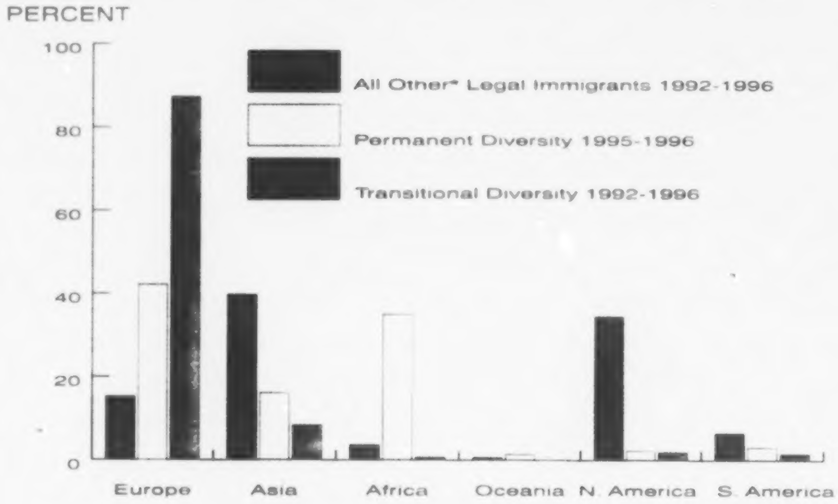
Mexico	**159,731**
Philippines	**55,778**
India	**44,781**
Vietnam	**42,006**
Mainland China	**41,662**
Dominican Republic	**39,516**
Cuba	**26,415**
Ukraine	**21,051**
Russia	**19,646**
Jamaica	**19,029**

Source: INS FY 1996 Public Use Admissions Data.

Places of Origin. Asia and North America (i.e., Mexico, Canada, the Caribbean, and Central America) remain the sending regions with the largest share of immigrants. Mexico remains the largest sending country and its share of total legal immigrants to the U.S. increased from an average of 12 percent in the 1980s to more than 13 percent in FY 1994 and up to 18 percent in FY 1996. The effects of the Immigration Reform and Control Act of 1986 [IRCA], which resulted in the legalization of about two million formerly illegal Mexican residents, explains this trend. Even though the special admission category for the spouses of legalized aliens' dependents has been discontinued, Mexico benefits from the IMMACT's removal of per-country limits on the numerically limited spouse and children class of admission (FB-2A).

IMMACT established a transitional and a permanent "diversity" category for countries whose admission numbers were adversely affected by the Immigration Act of 1965. The transitional program was in effect from FY 1992 to 1994, but unused visas were carried over through FY 1996. The permanent program went into effect in FY 1995. European countries benefitted the most from the transitional program, which mandated that as many as 40 percent of the visas could go to nationals of Ireland. Actual Irish admissions reached only 35 percent, with Polish immigrants accounting for an even larger share (38 percent). Under the permanent diversity program, 42 percent of the immigrants came from European countries and 35 percent came from Africa. The effect on African admissions is particularly noteworthy as Africans account for less than 1 percent of immigrants in other admission categories.

Origins of Diversity Immigrants versus All Other* Immigrants



*Other includes immigrants in family, employment, and humanitarian-based categories of admission.
Source: INS Public Use Admissions Data.

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Intended U.S. destinations. Immigrants in FY 1996 continue to select just a few states as their destinations. About two-thirds intend to reside in California, New York, Texas, Florida, and New Jersey. One-quarter of admissions are to California alone with another one-seventh to New York. New York City retains its place as the pre-eminent immigrant city with 15 percent of immigrants intending to go there. About 7 percent of immigrants intend to go to Los Angeles, and Miami and Chicago are in third place with about 4.5 percent each of the total. There has been little change in these leading destinations since IMMACT. However, some new destinations have emerged in recent years. For example, during the past decade, such midwestern and southern states as Mississippi, Nebraska, Kansas, Georgia and North Carolina saw more than a doubling of the number of immigrants intending to reside there. Although the numbers are significantly smaller than the more traditional destinations, absorbing more new immigrants can be a challenge for these newer destinations that often do not have the immigration-related infrastructure of the traditional receiving communities.

Age. Immigrants in FY 1996 remain young, with the largest proportion being in their later teens or twenties. A little more than one-fifth are children 15 years of age or younger, and another one-fifth are 45 years or older. More than one-half of family-based immigrants are younger than 30 years of age, reflecting the predominance of spouses and children. Because of beneficiaries, employment-based immigrants have just as many minor dependents age 15 years and younger as other groups, but more than two-fifths of these employment-based immigrants themselves are 30-44 years, the experienced and highly productive working ages. Diversity immigrants have a similar, yet somewhat younger, age distribution than other classes of admission. In contrast, and in large part due to those admitted as refugees from the former Soviet Union, humanitarian admissions tend to be somewhat older than other immigrants.

1996:

Top Ten Intended States of Residence of Legal Immigrants

California	199,221
New York	153,731
Texas	82,229
Florida	79,067
New Jersey	63,162
Illinois	42,154
Massachusetts	23,017
Virginia	21,329
Maryland	20,683
Washington	18,718

Source: INS FY 1996 Public Use Admissions Data.

Top Ten Intended Metro Areas of Residence of Legal Immigrants

New York	133,168
Los Angeles	64,285
Miami	41,527
Chicago	39,989
Washington DC	34,327
Houston	21,387
Boston	18,726
San Diego	18,226
San Francisco	18,171
Newark	17,939

Source: http:/www.ins.usdoj.gov/stats/annual/fy96/997.html

Age Groups of 1996 Legal Immigrants (Principals and Derivative Beneficiaries)

GROUP	ALL	FAMILY	EMPLOYMENT	DIVERSITY	HUMANITARIAN
15 yrs. & younger	22%	23%	20%	22%	20%
16 through 29 yrs.	31%	34%	23%	33%	27%
30 through 44 yrs.	27%	23%	44%	34%	24%
45 through 60 yrs.	15%	14%	12%	10%	21%
65 years & older	5%	5%	0%	1%	8%

Source: INS FY 1996 Public Use Admissions Data.

Gender. Females were 54 percent of admissions in FY 1996. There had been an essentially even balance of men and women during the decade of the 1980s. The increased share of females in the 1990s parallels the historical tendency toward more female immigrants throughout much of the post-World War II period. It also reflects the admission of the spouses of legalized aliens who were predominantly male. In FY 1996, family-based admissions were predominantly female (57 percent) and employment-based admissions (including beneficiaries) were evenly balanced by gender. Diversity (45 percent female) and humanitarian (48 percent female) admissions, in contrast, had more male immigrants. That a slight majority of FY 1996 humanitarian admissions were male is somewhat surprising given that worldwide refugee populations are disproportionately female.

English ability. The Immigration and Naturalization Service [INS] admissions data do not include information on English language ability (or education, as discussed below). The following analysis draws instead on preliminary data from the New Immigrant Survey [NIS],[1] which studied a sample of immigrants admitted in FY 1996. The NIS is a pilot study designed to test the feasibility of a longitudinal immigrant survey. Although the data are not yet published, analysis indicates that it offers promise of providing certain information about immigrants that has not previously been available.

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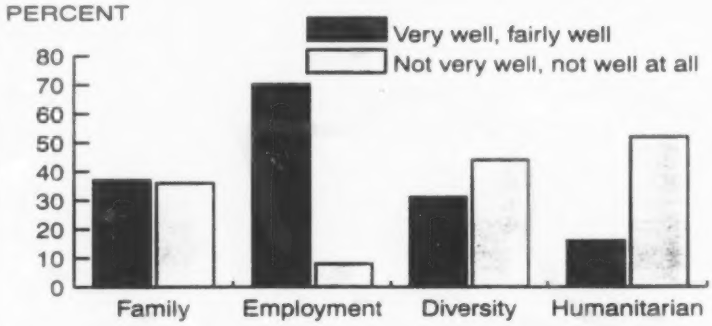
[1] Jasso, G.; Massey, D.S.; Rosenzweig, M.R.; Smith, J.P. 1997. The New Immigrant Survey [NIS] Pilot Study: Preliminary Results. Paper presented at the Joint Meeting of the Public Health Conference on Records and Statistics and the Data Users Conference, Washington, DC. (July.)

The NIS, using the same measure as the U.S. Census, reports on the English language proficiency of adult legal immigrants who are 18 years and older. The initial results show that employment-based immigrants report the greatest English ability—70 percent of employment-based admissions report speaking at least fairly well and less than 10 percent speak very little or no English (the remainder report an "average" speaking ability). About 37 percent of family-based admissions report speaking English at least fairly well and an almost equal proportion report speaking little or no English. The diversity immigrants tend to report even less English ability, despite the requirement that they have at least a high school education. The humanitarian admissions trail the furthest behind in reported English language ability. Only 16 percent report speaking English at least fairly well, while more than 50 percent report speaking little or no English.

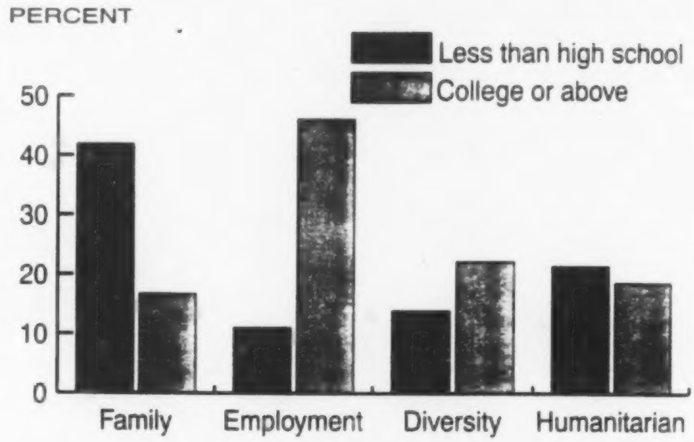
English Language Proficiency among New Adult Immigrants (18 years and older): 1996



Source: Jasso, G.; et al. 1997. New Immigrant Survey Pilot Study.

Education. The years of schooling completed by immigrants is perhaps one of the most critical measures of skill level. The NIS provides our first indicators of years of education of adult legal immigrants at the time of their admission. As found in studies of foreign-born residents, the immigrants surveyed by the NIS tend to cluster at the higher or lower ends of the educational spectrum and differ significantly in their educational attainment by class of admission. Fully 46 percent of employment-based admissions have completed four years of college or a graduate degree. This figure includes principals and beneficiaries, making it likely that well-educated employment-based immigrants tend to have well-educated spouses. In contrast, just 17 percent of family-based immigrants 25 years and older have completed a college-level education while 42 percent have less than a high school education.

Educational Attainment of Legal Immigrants (25 years and older): 1996



Source: Jasso, G.; et al. 1997. New Immigrant Survey Pilot Study.

Diversity immigrants are required to have a high school education or two years of skilled work experience. The NIS data show that diversity immigrants tend to be better educated than family-based, but not as well educated as employment-based immigrants. About 14 percent have not completed high school. They may be either principals who meet the work but not the education requirement or the spouses of the principals. Twenty-two percent of diversity immigrants have completed college or done graduate-level education, about the same proportion as among U.S. natives.[2]

The humanitarian classes of admission are less well educated than the employment-based, but are better educated than family admissions. The large number of relatively well-educated persons admitted as refugees from the Soviet Union may partly explain this finding. About 21 percent have less than a high school education, while about 19 percent have college or higher degrees.

Occupation. Ultimately, the English and educational skills that immigrants have are reflected in their occupations. The INS admissions data, which we use here, have only crude occupational classifications. It imperfectly captures the difference between immigrants who adjust into legal permanent resident [LPR] status after working in a U.S. job for several years and those who report an occupation upon admission that tells us more about what the immigrant did at home than what they will do here.

Sixty-five percent of all immigrants in FY 1996 reported no occupation or being a "homemaker," reflecting the fact that children,

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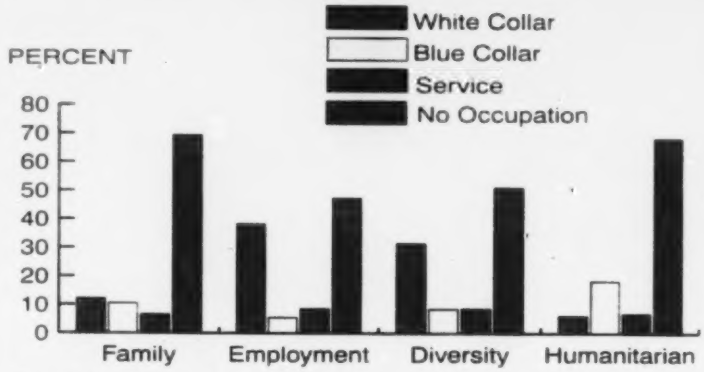
[2] The U.S. Current Population Survey [CPS] permits us to compare directly to the native-born, but the foreign-born data do not distinguish by admission status. The CPS data also include illegal aliens who have extremely low levels of education in the foreign-born category. See: Fix, M.; Passel, J.S. 1994. *Immigration and Immigrants: Setting the Record Straight.* Washington, DC: The Urban Institute. These figures for the diversity class of admission correspond to data on education collected by the U.S. Department of State for diversity immigrants only.

Major Occupational Category by Admission Class: 1996



Source: INS Public Use Admissions Data.

parents, and spouses are a large share of all admissions and most do not work at the time of entry.

Nevertheless, occupational status faithfully reflects the legal requirements of the admission class—the proportion of all immigrants not reporting an occupation is greater among family and humanitarian admissions, about 70 percent of all immigrants in each category. By way of comparison, only about one-half of all employment and diversity admissions have no reported occupation.[3] The skills which immigrants bring to the United States are reflected in their type of occupations. Family and humanitarian immigrants are primarily blue-collar workers. In contrast, employment-based and permanent diversity immigrants are predominantly white-collar workers. These broad differences between the major classes of admission have changed only slightly over the past three decades.

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[3] The initial results from the NIS pilot show that about 40 percent of adult nonexempt family immigrants are not employed. Alternatively, more than 95 percent of employment-based principals are employed. The INS admission figures for "no occupation" include children and persons who are unemployed, retired, or for whom no information is given.

FY 1996 Regular Admissions by Occupation: Predicted and Actual

OCCUPATION	PREDICTED (WITHOUT IMMACT)	ACTUAL (WITH IMMACT)	EXCESS OF ACTUAL OVER PREDICTED
WHITE-COLLAR WORKERS			
Professional, Technical, and Kindred			
Health Professionals	10,244	18,986	85%
Other Professionals	9,231	19,477	111%
Technical & Specialty	22,115	33,117	50%
Executives	20,283	30,702	51%
Sales	12,943	13,002	0%
Administrative Support	19,437	19,807	2%
BLUE-COLLAR WORKERS			
Precision Production	21,028	20,116	-4%
Operators, Fabricators, & Laborers	37,702	53,936	43%
FARMING, FORESTRY, AND FISHING	12,251	12,588	3%
SERVICE	48,180	51,797	8%
TOTAL WITH OCCUPATION	165,234	221,731	34%
TOTAL WITHOUT OCCUPATION	261,694	498,583	91%
GRAND TOTAL	426,928	730,314	69%

Note: Predicted numbers in FY 1996 are based on linear projections (from the years between 1972 and 1991), and are kept within numerical limits on nonexempt categories. Humanitarian admissions are not included.

Source: Greenwood, M.; Ziel, F.A. 1997. *The Impact of the Immigration Act of 1990 on U.S. Immigration*. Washington, DC: U.S. Commission on Immigration Reform.

IMMACT has had an effect on occupational distribution within these broad categories. To gauge its effects, a research paper prepared for the Commission calculated simple linear projections for all of the admission categories now subject to the worldwide ceiling on admissions. Data from FY 1972-1991 were analyzed and the trends identified, then projected forward to FY 1996. This analysis, therefore, paints a "what-if" picture of what today's immigration might have looked like if past trends had continued unaffected by IMMACT [see table above].

The actual total number of admissions under the worldwide ceiling in FY 1996 was 720,314 which—compared to the projected figure of 426,929—was 69 percent greater than would have been expected without IMMACT. Admissions were greater than the projected figure because IMMACT increased numerically-limited family, employment, and diversity admissions. The numerically-exempt admissions for the immediate relatives of U.S. citizens would have grown between 1992 and 1996 even without IMMACT. This analysis does not include humanitarian admissions.

Of immigrants who reported an occupation, the actual admissions in FY 1996 were 221,731 which—compared to the projected figure of 165,234—was 34 percent greater than would have been expected if IMMACT had not gone into effect. By contrast, nonworking immigrants experienced a 91 percent increase of actual over projected. This finding is not surprising as FY 1996 family admissions were significantly higher than would have been permissible under previous law. In part this was because IMMACT permitted unused FY 1995 employment-based numbers to be transferred to the FY 1996 family categories. In combination with a growth in immediate relatives (including those who would normally have been admitted in FY 1995 but were caught in processing delays), the additional visas meant more spouses and minor children entered. These immigrants are the least likely to be employed.

As might be anticipated, IMMACT's new emphasis on admitting highly-educated and skilled persons led to growth in professional occupations among those who reported an occupation. As stated above, there was an overall 34 percent increase in persons reporting an occupation. This increase was not evenly distributed, however. The number of health professionals, for example, was projected to be 10,244, but at 18,985 was 85 percent greater. The number of executives also shows a higher than expected increase. Interestingly, projections not shown here indicate that within the employment-based

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category, family members (beneficiaries) of the principals show the greatest growth in professional occupations. This suggests that when principals with more skills are admitted, they bring with them spouses who are, likewise, more skilled than in the past. Further, projections not shown here indicate that the skill requirement for permanent diversity immigrants makes for more highly-skilled admissions from eligible countries. In short, IMMACT increased both the numbers of more skilled admissions and their share of immigrants admitted

Most nonprofessional white-collar and blue-collar occupations show very little or no growth over what might have occurred without IMMACT. The one notable exception is a greater-than-expected increase in the number of "Operators, Fabricators, and Laborers." There were 53,936 admissions in these occupations compared to the 37,702 that were projected. As the employment-based access for persons with these occupations is highly limited, it appears that much of this increase is attributable to family-based admissions. It is unclear from the data, however, why this pattern has emerged.

Earnings. According to the NIS survey, the median earnings of all male immigrants admitted in 1996 was $15,600 and for women was $11,960, lower than the median earnings for natives. Compared to the earnings in their last country of residence, male immigrants experienced a 59 percent increase and women a 45 increase in earnings upon admission to the United States. Differences in earnings are, as should be expected, substantial by admission class. Many employment-based immigrants earn a median income of $36,400 on the date of their admission to LPR status, while the sibling or spouse of an LPR earns $11,750 and the spouse of a citizen earns $18,200.

Effects on the Economy

An independent evaluation of immigration by a panel of eminent social scientists at the National Research Council [NRC], sponsored by the Commission,[4] found that immigration has a positive economic impact on the national level. However, the NRC panel's findings confirm the by now commonplace conclusion that there are tangible costs to certain sectors of the labor market and certain communities. This reinforces the Commission's conclusions on the need for a well-regulated system of immigrant admissions, as well as the need for attention to means of improving integration and reducing friction between newcomers and established residents.

The NRC panel estimates that immigrants may add $1-10 billion directly to the national economy each year, a small but positive amount in a $7.6 trillion economy. Many consumers, business owners, and investors benefit from the immigrant labor force. Recent newcomers may be willing to work for lower wages than other U.S. workers, although, with the exception of many immigrants with less than a high school education, most immigrants tend to earn as much as natives after a decade. Many others in the economy benefit, particularly those who do work that is complementary to that performed by immigrants. Immigrants provide the labor that has kept viable entire segments of certain labor-intensive industries, such as garment and shoemaking. Many immigrant entrepreneurs expand trade with foreign countries from which they come, and the language and cultural expertise of many immigrant employees are valuable to U.S. companies doing business abroad.

Immigrants also contribute to the economic revitalization of the communities in which they live. As middle-class natives have left the inner cities, immigrant newcomers have settled, established businesses, bought homes, and otherwise invested in these areas. Gateway cities, such as New York and Los Angeles, have benefitted particularly from this urban renewal. At the same time, these cities face new challenges related to immigration. Growing immigrant communities require local school systems (some of which may have otherwise faced declining enrollments) to provide sufficient classroom space and teachers. They must also develop programs to teach children who are without English skills or prior education. Overcrowded housing, drug trafficking, gang violence, sweatshops, and public health problems also may be found in many of these inner-city communities.[5]

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[4] National Research Council. (Smith, J.P.; Edmonston, B. eds.). 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* Washington, DC: National Academy Press.

Immigration particularly affects certain U.S. workers. The NRC panel finds that workers with less than twelve years of education are the most adversely affected by low-skilled immigrant workers. Immigrants may have reduced substantially the wages of high school dropouts, who are about one-tenth of the workforce, by 5 percent nationwide. This is a sizable impact on a group that was already poorly paid before the loss in real earnings it experienced over the past two decades. Most often it is the foreign-born worker, particularly in labor markets with large numbers of immigrants who experience the greatest competition.[6] While the education and skill level of most U.S. workers differs significantly from those of most immigrants (and therefore they are not competing for the same jobs), the new arrivals are often direct substitutes for immigrants who arrived a short time before them.[7]

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[5] Muller, T. 1993. *Immigrants and the American City.* New York: New York University Press. Winnick, L. 1990. *New People in Old Neighborhoods: The Role of New Immigrants in Rejuvenating New York's Communities.* New York: Russell Sage Foundation.

[6] Greenwood, M.; Tienda, M. 1997. U.S. Impacts of Mexican Immigration. Team Report to Mexico/United States Binational Study on Migration. Greenwood, J.; Hunt, G.L. 1995. Economic Effects of Immigrants on Native and Foreign-Born Workers: Complementarity, Sustitutability, and Other Channels of Influence. *Southern Economic Journal.* 61:4 1096.

The evidence on the impact of immigration on native-born minorities nationwide is less clear. The NRC concluded that in the aggregate, the economic opportunities of African Americans are not reduced by immigration because African Americans and immigrants tend to be in different labor markets and reside in different cities. Other research finds small, adverse effects on African Americans.[8] These effects are found most strongly when low-skilled minority workers compete with low-skilled immigrant workers in the same industries and the same geographic areas.

The fiscal effects of immigration also are complicated. Generally, the impacts on the federal government are favorable compared to those on state and local governments. Most studies show that at the federal level, the foreign-born pay more in taxes than they receive in services. When spread across all taxpayers, this characteristic represents a very small, but positive, benefit. At the local level, however, immigrants often represent a net fiscal cost, in some cases a substantial one. Research on the resident illegal alien population finds the clearest examples of fiscal costs to states and localities.[9] In general, much of the negative effect is related to school costs that are considerable because of the larger size of many immigrant families.

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[7] Waldinger, R. 1996. *Still the Promised City? African Americans and New Immigrants in Postindustrial New York.* Cambridge: Harvard University Press. Waldinger, R.; Bozorgmehr, M. 1996. *Ethnic Los Angeles.* New York: Russell Sage Foundation.

[8] Hamermesh, D.S.; Bean, F.D. (eds.) 1998 forthcoming. *Help or Hinderance? Immigration and Its Economic Implications for African Americans.* New York: Russell Sage Foundation.

[9] Taylor, E.; Martin, P.; Fix, M. 1997. *Poverty Amidst Prosperity: Immigration and the Changing Face of Rural California.* Washington, DC: The Urban Institute Press. U.S. General Accounting Office. 1995. *Illegal Aliens: National Cost Estimates Vary Widely.* Washington, DC. 6. Clark, R.; Passel, J.S.; Zimmermann, W.N.; Fix, M.E. 1994. *Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States.* Washington, DC: The Urban Institute Press.

Although funds spent on education may be considered an investment, not just a fiscal burden, the payoff is not realized for many years.

Education affects fiscal impacts in a second way. Ultimately, the economic success and fiscal contributions of immigrants are determined by their educational level. The NRC panel found that immigrants who complete high school and beyond generally represent a more favorable balance of fiscal costs and contributions than do those with little or no education. Even over their lifetimes, immigrants without education are unlikely to contribute sufficient tax revenues to offset their use of services. Both groups of immigrants tend to use public services in a similar fashion, particularly as related to the schooling of their children, but the more educated immigrants tend to earn more and pay higher taxes.

Educational differences also explain why certain states and localities are more adversely affected by immigration than are others. California immigrants represent a sizeable tax burden (estimated at almost $1,200 per native-headed family per year) while New Jersey immigrants represent a more modest tax burden (estimated to be $232 per native-headed family per year). The difference can be explained largely by the differences in the average educational level of the immigrants residing in these states.[10]

English language ability also affects the economic success and fiscal impacts of immigrants. In the 1990 Census, 47 percent of the foreign-born more than 5 years of age reported not speaking English "very well." Individuals with poor English language skills tend to be confined to the lowest levels of the U.S. job market. By contrast, ability in spoken English markedly improves immigrants' earnings, especially for Hispanic and Asian adult immigrants.[11] English reading comprehension also has been found to improve the earnings of young immigrant adults.[12]

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[10] See: Espenshade, T. 1997. *Keys to Successful Immigration: Implications of the New Jersey Experience.* Washington, DC: The Urban Institute Press.

[11] Chiswick, B.R. (ed.). 1992. *Immigration, Language, and Ethnicity.* Washington, DC: The AEI Press. 229-96.

Population Growth and Natural Resources

In recent years there have been about 800,000 legal admissions and an additional estimated 200,000 to 300,000 unauthorized entries, but the net annual increase of the foreign-born population is about 700,000 each year due to return migration and mortality.[13] In 1996, the foreign-born population was 24.6 million, 9.3 percent of the U.S. population. Recent arrivals make up a large share of the resident foreign-born population; about 28 percent arrived after 1990, and an additional 35 percent during the 1980s.

It is estimated that international migration makes up somewhere between one-quarter and one-third of net annual population increase. Given current demographic trends and noting that much can happen to alter long-range forecasts, the U.S. Census Bureau projects the population to increase by 50 percent between 1995 and 2050. Immigration is likely to become a larger proportion of the net increase.[14]

The NRC report also presented estimates of population growth. It found that *without* immigration since 1950, the U.S. population would have been 14 percent smaller than its 1995 size of 263 million. The

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[12] Rivera-Batiz, F.L. 1992. English Language Proficiency and the Earnings of Young Immigrants in the U.S. Labor Market. *Policy Studies Review* 11:165-75.

[13] National Research Council. 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* Washington, DC: National Academy Press.

[14] U.S. Bureau of the Census. 1996. *Current Population Reports.* (Feb.). Edmonston, B.; Passel, J.S. (eds.). 1994. *Immigration and Ethnicity: The Integration of American's Newest Arrivals.* Washington, DC: The Urban Institute Press.

NRC projected the population to the year 2050 after making certain assumptions about mortality, fertility, and rates of group intermarriage. According to the projection based on these assumptions, the U.S. population would increase by 124 million persons to 387 million, with immigration responsible for two-thirds (82 million) of the increase. Of this 82 million, 45 million are immigrants and an additional 37 million increase is due to their higher assumed fertility.

Immigration affects the age structure as well as the overall population. The NRC panel projected that under current immigration policy, kindergarten through grade eight school enrollment in 2050 would be 17 percent higher than it was in 1995. High school enrollment would rise from 14.0 million in 1995 to 20.3 million in 2050. Immigration also has small effects on the proportion of the population that is elderly. No matter which immigration policies are adopted, according to the NRC, the number of persons aged 65 years and older will double between 1995 and 2050. However, the proportion of older people in the total population will be somewhat smaller with immigration.

The NRC panel's projection of the ethnic distribution of the U.S. population in 2050 shows the Hispanic population increasing from 10 to 25 percent and the Asian population from 3 to 8 percent of the population. These projections are dependent on today's rates of group intermarriage and how persons report their ethnicity. It may be that, like children of immigrants who arrived in the last century, descendents of today's immigrants will choose to report their ethnicity as being different from that of their parents, and that today's ethnic categories will not accurately describe tomorrow's populations.

What broader implications do these growth figures have? Some analysts argue that high immigration levels mean an abundant supply of youthful workers who will be a substantial spur to the economy.

From this perspective, population growth is an engine for technological progress and the means to solve environmental problems, effectively spawning change out of necessity. Proponents of this view argue that human resourcefulness has dealt with population growth in the past and the solutions often have left us better off. Adding more people may "cause us more problems, but at the same time there will be more people to solve these problems."[15]

Others are concerned about the negative consequences of population growth, particularly on the environment, infrastructure, and services.[16] They see population growth as imposing pressures on our natural resources and quality of life, raising special concerns in the arid regions of the southwest or sites of industries relocating to the south central states.[17] Those concerned argue that our future well-being depends upon both conservation, and stabilizing population growth.[18]

This debate primarily concerns total U.S. population growth, which is strongly influenced by immigration. Still, there is little or no information about whether immigrants have *differential* impacts distinct from the population increase they produce on the U.S. environment.[19]

The Commission did find that rapid inflows of immigrants can pose difficulties for those who must plan for community growth. Schools sometimes receive large numbers of new immigrant students that had not been planned for. Housing and infrastructure development may not be adequate in affected urban and rural communities.[20] New immigrant destinations, sometimes to areas that have not had new immigrants for a century or more, can put particular stress on communities that have experienced rapid growth in the past decade.

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[15] Simon, J. 1994. More People, Greater Wealth, More Resources, Healthier Environment. *Economic Affairs* (April) 22-29.

[16] Beck, R. 1994. *Re-Charting America's Future: Responses to Arguments Against Stabilizing U.S. Population and Limiting Immigration.* Petoskey, MI: The Social Contract Press.

[17] U.S. Commission on Immigration Reform. 1995. Mesa, Arizona U.S. Commission on Immigration Reform roundtable. U.S. Commission on Immigration Reform 1997. Site visit to Garden City, Kansas.

[18] Abernethy, V. 1994. *Population Politics.* New York: Insight Press.

[19] Kraly, E.P. 1995. *U.S. Immigration and the Environment: Scientific Research and Analytic Issues.* Washington, DC: U.S. Commission on Immigration Reform.

Foreign Policy and National Security Interests

Immigration matters frequently are intertwined with foreign policy and national security. Today, migration and refugee issues are matters of high international politics engaging the heads of state involved in defense, internal security, and external relations.[21] International migration intersects with foreign policy in two principal ways. The U.N. Security Council has acknowledged that migration can pose threats to international peace and security through economic or social instability or humanitarian disasters. Migration can also build positive relations with other countries and thereby promote national security. As a consequence, migration itself requires bilateral and international attention to help address the causes and consequences of movements of people.

During the Cold War, a foreign policy priority was the destabilizing of Communist regimes. Refugee policy was often a tool to achieve that strategic goal, for instance, by encouraging the flow of migrants from Eastern Europe or Cuba. Elsewhere, political, economic, and military involvement in Southeast Asia and the Dominican Republic had significant migration consequences, as large numbers of Southeast Asians and Dominicans ended up as refugees and immigrants to the U.S. These foreign policy priorities generally have had significant immigration consequences years later.

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[20] Taylor, E.; Martin, P.; Fix, M. 1997. *Poverty Amidst Prosperity: Immigration and the Changing Face of Rural California*. Washington, DC: The Urban Institute Press.

[21] Weiner, M. 1992. Security, Stability, and International Migration. *International Security* 17:3 (Winter) 91-126.

Alternatively, immigration concerns sometimes have played a significant role in U.S. foreign policy, especially when mass movements to the U.S. are feared. A stated rationale for U.S. Central-American policy in the 1980s was to prevent a mass movement that would occur if anti-American Marxist dictatorships were established in Central America. One of the explicit reasons for the military intervention in Haiti in 1994 was to restrain the flow of migrants onto U.S. shores. And, although the U.S. does not officially maintain relations with Cuba, migration concerns gained priority over diplomatic ones leading to negotiations on the Cuban Migration Agreement and to a reversal of policy regarding the interdiction of Cuban migrants.

Some observers believe that environmental causes now rival economic and political instability as a major source of forced migration throughout the world. There are estimates that as many as one-hundred million people may be displaced, in part, because of degradation of land and natural resources. "That will increase the pressure to migrate to places like the United States."[22] The pervasive deterioration of Mexico's rural drylands may contribute to between 700,000 and 900,000 people a year leaving rural areas.[23] Environmental degradation in Mexico, Haiti, and Central America also are believed to have migration consequences for the U.S. Often environmental problems intersect with other causes. One researcher argues that migrants from Haiti may be considered "environmental refugees" because the root causes of their migrations are land degradation and the Haitian government's unwillingness to act in the interest of the general population."[24]

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[22] Schwartz, M.L.; Notini, J. 1994. *Desertification and Migration: Mexico and the United States.* Washington, DC: U.S. Commission on Immigration Reform.

[23] National Heritage Institute. 1997. *Environmental Degradation and Migration: The U.S./Mexico Case Study.* Report prepared for the U.S. Commission on Immigration Reform.

Stabilizing economic growth and democracy may be an effective means of reducing migration pressures. The Commission for the Study of International Migration and Cooperative Economic Development[25] concluded that, over the long run of a generation or more, trade and investment are likely to reduce migration pressures. Supporters of the North American Free Trade Agreement [NAFTA] argued that NAFTA-related development eventually will reduce unauthorized Mexican migration. The U.S. has provided the reinstalled democratically-elected government of Haiti with a great deal of rehabilitation assistance that should aid the stability of that country.

CONCLUSION

Properly-regulated immigration and immigrant policy serves the national interest by ensuring the entry of those who will contribute most to our society and helping lawful newcomers adjust to life in the United States. It must give due consideration to shifting economic realities. A well-regulated system sets priorities for admission; facilitates nuclear family reunification; gives employers access to a global labor market while protecting U.S. workers; helps to generate jobs and economic growth; and fulfills our commitment to resettle refugees as one of several elements of humanitarian protection of the persecuted.

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[24] Catanese, A. 1990/91. *Haiti's Refugees: Political, Economic, Environmental.* (Paper 17). San Francisco: Natural Heritage Institute; Indianapolis: Universities Field Staff International.

[25] The Commission for the Study of International Migration and Cooperative Economic Development. 1990. *Unauthorized Migration: An Economic Development Response.* Washington, DC.

AMERICANIZATION AND INTEGRATION OF IMMIGRANTS

A DECLARATION OF PRINCIPLES AND VALUES

Immigration to the United States has created one of the world's most successful multiethnic nations. We believe these truths constitute the distinctive characteristics of American nationality:

- American unity depends upon a widely-held belief in the principles and values embodied in the American Constitution and their fulfillment in practice: equal protection and justice under the law; freedom of speech and religion; and representative government;
- Lawfully-admitted newcomers of any ancestral nationality—without regard to race, ethnicity, or religion—truly become Americans when they give allegiance to these principles and values;
- Ethnic and religious diversity based on personal freedom is compatible with national unity; and
- The nation is strengthened when those who live in it communicate effectively with each other in English, even as many persons retain or acquire the ability to communicate in other languages.

As long as we live by these principles and help newcomers to learn and practice them, we will continue to be a nation that benefits from substantial but well-regulated immigration. We must pay attention to our core values, as we have tried to do in our recommendations throughout this report. Then, we will continue to realize the lofty goal of *E Pluribus Unum*.[1]

AMERICANIZATION

The Commission reiterates its call for the Americanization of new immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity. The U.S. has fought for the principles of individual rights and equal protection under the law, notions that now apply to all our residents. We have long recognized that immigrants are entitled to the full protection of our Constitution and laws. The U.S. also has the sovereign right to impose appropriate obligations on immigrants.

The Commission reiterates its call for the Americanization of new immigrants.

In our 1995 report to Congress, the Commission called for a new commitment to Americanization. In a public speech that same year, Barbara Jordan, our late chair, noted: "That word earned a bad reputation when it was stolen by racists and xenophobes in the 1920s. But it is our word, and we are taking it back." Americanization is the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence.

This process enhances our unity by focusing on what is important, through acknowledging that the many real differences among us as individuals do not alter our essential character as a nation.

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[1] Our national motto, *E Pluribus Unum*, "from many, one," was originally conceived to denote the union of the thirteen states into one nation. Throughout our history, *E Pluribus Unum* also has come to mean the vital unity of our national community founded on individual freedom and the diversity that flows from it.

This Americanization process depends on a set of expectations that the United States, which chooses to invite legal immigrants, legitimately has of newcomers. It applies equally to the expectations immigrants legitimately have of their new home.

The Commission proposes that the principles of Americanization be made more explicit through the covenant between immigrant and citizens. These principles are not mere abstractions. They can form a covenant between ourselves and immigrant newcomers. As President Johnson eloquently stated in 1965:

> They came here—the exile and the stranger. . . . They made a covenant with this land. Conceived in justice, written in liberty, bound in union, it was meant one day to inspire the hopes of all mankind; and it binds us still. If we keep its terms, we shall flourish.

We have not always abided by its terms, but the ideal of a covenant between immigrant and nation still captures the essence of Americanization. Immigrants become part of us, and we grow and become the stronger for having embraced them. In this spirit, the Commission sees the covenant between immigrants and ourselves as:

> ***Voluntary***. Immigration to the United States—a benefit to both citizens and immigrants—is not an entitlement and Americanization cannot be forced. We as a nation choose to admit immigrants because we find lawful immigration serves our interests in many ways. Likewise, no one requires immigrants to come here or to become citizens; they choose to come and, if they naturalize, they choose to become a part of our polity.

Mutual and reciprocal. Immigration presents mutual obligations. Immigrants must accept the obligations we impose—to obey our laws, to pay taxes, to respect other cultures and ethnic groups. At the same time, citizens incur obligations to provide an environment in which newcomers can become fully participating members of our society. We must not exclude them from our community nor bar them from the polity after admission. This obligation to immigrants by no means excuses us from our obligations to our own disadvantaged populations. To the extent that immigration poses undue burdens on our communities, our citizenry, or immigrants themselves, we have an obligation to recognize and address them.

Thus the United States assumes an obligation to those it admits, as immigrants assume an obligation to this country they chose. Having affirmatively admitted the newcomer, the federal government necessarily extends civic and societal rights. Unfortunately recent legislative changes effectively have excluded immigrants from the public safety net until such time as they become naturalized citizens. This Commission previously recommended against such action. We believe it is likely that these changes will lead to greater problems both for immigrants and for the communities in which they live. Legislation that leads immigrants to seek citizenship to protect eligibility for social benefits, rather than out of commitment to our polity, provides the wrong incentive. The effect is not to exalt citizenship, but to diminish it.

Individual, not collective. The United States is a nation founded on the proposition that each individual is born with certain rights and that the purpose of government is to secure these rights. The United States admits immigrants as individuals (or individual members of families). As long as the United States continues to emphasize the rights of individuals over those of groups, we need not fear that the diversity brought by immigration will lead to ethnic division or disunity. Of course, the right to assemble and join with others is a fundamental right of all Americans, immigrants included. However, unlike other countries, including those from which many immigrants come, rights in the United States are not defined by ethnicity, religion, or membership in any group; nor can immigrants be denied rights because they are members of a particular ethnic, religious, or political group.

The Commission believes that the federal government should take the lead and invite states and local governments and the private sector to join in promoting Americanization. For example, "I Am an American Day" was once widely celebrated in public schools and local communities. Recent immigration legislation mandates naturalization ceremonies on the 4th of July. While the federal government cannot and should not be the sole instrument of Americanization, it can provide important leadership in supporting the implementation of programs designed to promote full integration of newcomers.

To help achieve full integration of newcomers, the Commission calls upon federal, state, and local governments to provide renewed leadership and resources to a program to promote Americanization that requires:

- Developing capacities to orient both newcomers and receiving communities;
- Educating newcomers in English language skills and our core civic values; and
- Revisiting the meaning and conferral of citizenship to ensure the integrity of the naturalization process.

ORIENTATION

The Commission recommends that the federal government take an active role in helping newcomers become self-reliant: orienting immigrants and receiving communities about their mutual rights and responsibilities, providing information they need for successful integration, and encouraging the development of local capacities to mediate when divisions occur between groups.

The Commission recommends that the federal, state, and local governments take an active role in helping newcomers become self-reliant: orienting immigrants and receiving communities as to their mutual rights and responsibilities, providing information they need for successful integration, and encouraging the development of local capacities to mediate when divisions occur between groups. Information and orientation must be provided both to immigrants and to their receiving communities. The experience of "newcomer schools" is that providing coordinated information and advice on life in the United States accelerates the integration of newcomers, which, in turn, decreases the negative impacts on communities. Information on expected impacts and successful programs can help localities foster immigrant integration and mediate differences to avoid community conflicts.

More specifically, to integrate into American society, immigrants need information on their legal rights and obligations, on American core civic beliefs, on how to access services, and on immigration-related requirements. Communities require information on the numbers and characteristics of immigrants arriving in their midst, the eligibility of newcomers for various services, the legal responsibilities of state and local government agencies, and similar matters. The Commission believes the federal government should help immigrants and local communities by:

- **Giving orientation materials to legal immigrants upon admission** that include, but are not limited to: a welcoming greeting; a brief discussion of U.S. history, law, and principles of U.S. democracy; tools to help the immigrant locate and use services for which they are eligible; and other immigration-related information and documents. All immigrants would receive the same materials. The packets would be available in English and the main immigrant languages. It is not the Commission's intent to prescribe all parts of an orientation packet but, rather, to suggest the most important information and key resources that should be included.

Welcoming statement. The Welcoming Statement would congratulate immigrants on their decision to become permanent residents of the United States. It also would summarize the basic principles that all Americans embrace.

Example of a Welcoming Statement

Congratulations on your decision to immigrate to the United States of America. Best wishes for a successful settlement in your new home. This is a proud country of individual freedom, opportunity, and diversity with a long tradition of immigration. Finding success and opportunity in the United States can be difficult. We realize that immigrants face many challenges as they become self-reliant, such as learning a new language and adjusting to new circumstances. The U.S. has learned from its tradition of immigration that patience, tolerance, and adaptability are required from each and every one of us.

Basic American principles that you are asked to embrace include: a commitment to serve the best interests of the United States and the community in which you live; knowledge of and respect for our laws and democratic institutions; respect for freedom of speech and religion; and a commitment not to discriminate against others on the basis of nationality, race, sex, or religion. The excerpts from the U.S. history and law section of your orientation packet should serve to illustrate the meaning of these important principles.

We the people of the United States welcome you.

Example of Documents on the Founding Principles

On July 4, 1776, the Continental Congress adopted a Declaration drafted by Thomas Jefferson that defined the commitment of a new nation to the principles of liberty and justice for all:

> *We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed. . . .*

The greatest contradiction in the new nation's founding was the institution of human slavery, which ended only after a bloody civil war (1860-1864). After the decisive battle at Gettysburg, in 1863, Abraham Lincoln dedicated the cemetery, ending with these words:

> *[W]e here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.*

After the Civil War, the effort to live up to the promises of the founding principles intensified. In 1872, Susan B. Anthony was arrested for attempting to vote in a Presidential election. Her speech on the rights of women was an important step toward gaining women the vote:

> *The preamble of the federal Constitution says . . . It was we, the people; not we, the white male citizens; nor yet we, the male citizens; but we, the whole people, who formed the Union. And we formed it, not to give the blessings of liberty, but to secure them; not the half of ourselves and our posterity; but to the whole people —women as well as men.*

Way into the twentieth century, the founding principles continue to challenge Americans. In 1963, the Reverend Dr. Martin Luther King, Jr. led a peaceful March on Washington, and spoke on the steps of the Lincoln Memorial in the cause of civil rights.

> *When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was a promise that all men would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness . . .*
>
> *I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident; that all men are created equal. . . . I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character . . . And if America is to be a great nation this must become true.*

U.S. history, law, and principles of democracy. This would include a brief history of the United States and of the principles listed in the welcoming statement, followed by excerpts from relevant historical documents. It would stress that American civic culture is based on a trust in ordinary people's ability to govern themselves through their elected representatives who are then accountable to the people, on the right of all members of the polity to participate in public life as equals, and on the freedom of individual members of the community to differ from each other in religion and other private matters.

Tools for settlement. This section would emphasize the development of self-reliance. It would include general information and checklists to aid immigrants in finding and using services in their community that may help them in developing economic independence.

Example of Tools for Settlement

What to expect upon immigration: information to orient newcomers on federal policies and services, such as a pre-/ post-arrival checklist on admissions, information for those adjusting status on new rights and responsibilities as permanent residents, reminder to register for military service if necessary, the role of government agencies and service providers; consumer protection and tax policies;

How to secure basic needs: information on housing, employment, education and language training, health, transportation, police and fire protection, managing finances, and cultural adjustment;

Finding assistance and advice: telephone numbers for the local information clearinghouses, government agencies; documents listing weight and measurement conversions, U.S. holidays, instructions in using the telephone and postal systems; a U.S. map;

Getting involved in the community: listings of community organizations (e.g., civic, sports, arts) and volunteer opportunities.

Immigration information and documents. This section would provide necessary immigration forms, information on naturalization, and a card for non-English-speaking immigrants to indicate their need for an interpreter.

- **Encouraging state governments to establish information clearinghouses in major immigrant receiving communities.** The Commission recommends that the federal government provide modest incentive grants to states to encourage them to establish and maintain local resources that would provide information to immigrants and local communities. For example, local information clearinghouses could provide information to immigrants on rights and responsibilities, naturalization, education and training, and the world of work. They could have materials available on tenant law and renter/landlord rights and responsibilities. They could spell out how U.S. family law (regarding marriage and prohibiting spouse and child abuse, polygamy, and female genital mutilation, etc.) may differ from other cultures. They could provide information on public life (driving, insurance, hunting/fishing licences, law enforcement, consumer protection, etc.). They could also provide information to local public and private organizations about immigrants, e.g., documentation, culture/background, eligibility status for programs, work authorization verification.

The resource centers could develop, translate and disseminate materials; foster partnerships among immigrant interest groups, ethnic churches, and service providers (advisory boards, taskforces, planning boards, coalitions); and develop volunteer networks in immigrant communities to help newly-arriving immigrants. These efforts could help reduce community tensions arising from immigration by providing accurate information and helping communities find ways to mediate these tensions. The resource centers could also provide information on model programs implemented by businesses, service agencies, and others.

The Office of Refugee Resettlement in the Department of Health and Human Services, which already provides funding for refugee services, could administer this grant program. Each state receiving funds would designate the local structure through which the funding would be administered as part of its application for funds. Some states are likely to designate the state refugee coordinator's office, but others may designate the state education department. States had similar flexibility when they received funds under the State Legalization Impact Assistance Grant [SLIAG] program.

These already-existing structures could easily integrate the proposed services with only modest financial increments. Based on its consultations, the Commission believes that an annual appropriation of $30-35 million would cover development of orientation materials and underwrite services in forty to fifty targeted communities. The monies should be administered flexibly, not as a formula to each state. Targeted areas should include those with historically significant numbers of immigrants as well as communities experiencing a sudden growth in immigrant arrivals. (In Garden City, Kansas, for example, the Commission observed how the arrival of new meatpacking plants changed the population from one with few foreign-born residents a decade ago to one with a sizeable immigrant component today.)

Project Vida in El Paso provides medical services to the Latino border community. Funded by the Presbyterian Church and public/private grants and contracts, Vida developed "one-stop shopping" for primary health care, education, housing, and other social services. It built 20 affordable rental units; and helped to generate an increase in local elementary school reading scores.

- **Promoting public/private partnerships to orient and assist immigrants in adapting to life in the United States.** The Commission previously has called for a renewed public/private partnership in the Americanization of immigrants. While the federal government makes the decisions about how many and which immigrants will be admitted to the United States, the actual process of integration takes place in local communities. Local government, schools, businesses, religious institutions, ethnic associations, and other groups play important roles in the Americanization process.

The Commission urges the federal government to assemble leaders from the public and private sectors at the federal, state, and local levels to discuss ways to invigorate a public/private partnership to promote Americanization. The participants should include representatives of state and local educational systems, businesses, labor, local governments, and community organizations. The meeting would address ways to enhance resources for instruction in English language acquisition, civic understanding, and workplace skills. The federal grant program described above also could help promote more coordinated efforts at the local level by establishing advisory structures representing the various public and private institutions with interest in immigration matters.

The Fannie Mae Foundation built a model public/private initiative with community-based organizations, public officials, and lenders to facilitate home ownership and naturalization for immigrants.

EDUCATION

Education is the principal tool of Americanization. Local educational institutions have the primary responsibility for educating immigrants. However, there is a federal role in promoting and funding English language acquisition and other academic programs for both immigrant children and adults.

BEST COPY AVAILABLE

The Commission urges a renewed commitment to the education of immigrant children. The number of school-aged children of immigrants is growing and expected to increase dramatically. These children, mostly young, speak more than 150 different languages; many have difficulty communicating in English. They are enrolled in public schools as well as in secular and religious private schools through the country.

The Commission urges a renewed commitment to the education of immigrant children.

In addition to the problems other students have, immigrant children face particular problems in gaining an education—often because of language difficulties. The 1990 Census shows that 87 percent of immigrant children attended high school as compared to 93 percent of natives. More than one-fourth of Mexican immigrant youth between ages 15 and 17 were not in school in 1990. While some dropped out, others never "dropped in" to school in the first place.

Immigrant children often come from countries with customs, traditions, and social and governmental structures that differ from those they encounter in the U.S.; some have little or no formal education and no understanding of the American school system; some arrive with personal experiences of trauma and war; many older children come from countries where school ends at a younger age; many experience lengthy delays in being mainstreamed into regular English-speaking classes; and some do not receive appropriate-level instruction in other academic subjects while they are learning English.

Immigrant children also bring strengths to American society. For example, their native-language skills contribute to building the future multilingual workforce needed in a global economy; sharing of their cultural heritage will promote the sensitivity of that workforce as it interacts in a worldwide marketplace. Many immigrant children who enroll in school and then remain to graduate do well academically. These immigrant children are more likely than natives to prepare for, attend, and complete college.[2] The key, however, is helping them achieve sufficient English proficiency to be able to participate.

The Commission emphasizes that rapid acquisition of English should be the paramount goal of any immigrant language instruction program. English is the most critical of basic skills for successful integration. English can be taught to children in many ways. Effective programs share certain common characteristics. Based on a review of these programs, the Commission emphasizes the need to:

The Commission emphasizes that rapid acquisition of English should be the paramount goal of any immigrant language instruction program.

- **Conduct regular evaluations of students' English competence and their ability to apply it to academic subjects.** Such evaluations will ensure placement of immigrant children into regular English-speaking classes as soon as they are prepared. Regular evaluation also will highlight strengths and weaknesses in educational programs and provide insight on improvements that are needed to ensure timely English acquisition.

- **Collect and analyze data regularly on students, their linguistic and academic performance, and the method of instruction.** Presently, federal, state, and local governments fail to collect and analyze adequate, uniform, data on bilingual and other forms of English instruction. Such failure hinders overall evaluation and the responsible allocation of government funds. A 1997 National Research Council report[3] pointed out the need for new systems to support data collection and research in this area. The NRC recommended establishment of a new Department of Education Advisory Committee on Research on English-Language Learners, urged the National Center for Education Statistics to take the lead in collecting data on students and programs, and recommended that the Office of Bilingual Education and Minority Language Affairs take the lead in developing and evaluating programs to enhance teacher development.

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[2] Venez, G.; Abrahamse, A. 1996. *How Immigrants Fare in U.S. Education.* Santa Monica: RAND. Rumbaut, R.G.; Cornelius, W.A. 1995. *California's Immigrant Children: Theory, Research, and Implications for Educational Policy.* San Diego: Center for U.S. Mexican Studies.

Seattle's Sharples Center teaches refugee students with limited or no English proficiency in grades six through twelve. They are grouped by English language ability, not age. Because of high demand, they usually can stay for only six months or less. The program focuses on preventing subsequent low academic performance and also preventing the high dropout rates that occur when students with limited English proficiency are mainstreamed too soon.

- **Include appropriate grade-level instruction in other academic disciplines.** Coordination with teachers, curricula, and instruction outside of English acquisition will promote students' mastery of regular subject matter while they learn English.

- **Involve parents of immigrant students in their schooling.** A characteristic of many of the most successful language acquisition programs is the active involvement of parents in the education of their children. Such "family literacy" models include programs that promote frequent parent-teacher conferences and that also encourage non-English-speaking parents to enroll in English as a Second Language [ESL] programs. Some of the adult programs are offered at the local school in the evenings.

The Commission encourages programs that are responsive to the needs of immigrant children and an orientation to United States school systems and the community, such as we have seen in "newcomer schools." Newcomer schools must not isolate immigrant newcomers.

The Commission encourages programs that are responsive to immigrant children's needs and an orientation to United States school systems and the community.

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[3] National Research Council (August, D; Hakuta, K. eds.). 1997. *Improving Schooling for Language-Minority Children: A Research Agenda.* Washington, DC: National Academy Press.

Instead, they must be transitional and actively promote the timely integration of students into mainstream schools. Successful programs recognize the special needs of immigrant children, particularly refugees. They share information among resettlement programs and school administrators and among English acquisition and regular classroom teachers. Along with English and other academic subjects, newcomer schools teach basic school survival and living skills (such as how the local transportation system works and how to shop for food) and develop intercultural communications. Some also provide access to a wide range of support services, such as health screenings and immunizations.

San Francisco's Newcomer High School was the nation's first high school devoted entirely to immigrants. Students with less than six years of education and/or poor English skills may attend for up to a year of intensive instruction based on their English ability rather than on their age. Before they are mainstreamed, students are taken to see their new school and meet their new teachers.

The Commission recommends the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship. An understanding of the history of the United States and the principles and practices of our government are essential for all students, immigrants and natives alike. Americanization requires a renewed emphasis on the common core of civic culture that unites individuals from many ethnic and racial groups. Civics instruction teaches students both the responsibilities and the rights of United States citizenship. Civics education also can help immigrant students turning eighteen to prepare for naturalization. The Commission recommends that local school boards institute civics programs that:

- Teach that the U.S. is united by the constitutional principles of individual rights and equal justice under the law;
- Restore the emphasis on such traditional American leaders as Washington, Jefferson, and Lincoln, who defined the American promise of liberty and equality for all, and incorporate other heroes and heroines, such as Sojourner Truth, Susan B. Anthony, Martin Luther King, Jr., Franklin

The Commission recommends the revival and emphasis on instruction of all kindergarten through grade twelve students in the common civic culture that is essential to citizenship.

Roosevelt, and Barbara Jordan, who expanded their promise to all Americans;

- Stress the importance of civic holidays and of American symbols and rituals, for example, the flag and the Pledge of Allegiance.

Civics instruction in public schools should be rooted in the Declaration of Independence, the Constitution—particularly the Preamble, the Bill of Rights, and the Fourteenth Amendment. Emphasizing the ideals in these documents is in no way a distortion of U.S. history. Instruction in the history of the United States, as a unique engine of human liberty notwithstanding its faults, is an indispensable foundation for solid civics training for all Americans.

The Commission emphasizes the urgent need to recruit, train, and provide support to teachers who work with immigrant students. There is a disturbing shortage of qualified teachers for children with limited English proficiency, of teacher training programs for producing such teachers, and of other support for effective English acquisition instruction. More than 50 percent of teachers in current bilingual education programs have no formal education in teaching students with limited English skills. Teachers are often unprepared and untrained in understanding how the cultural background and experiences of immigrant children may affect their ability to learn. They need to understand that while many students quickly acquire skill in using and understanding English in social situations, acquiring academic proficiency in English takes longer.

The Commission emphasizes the urgent need to recruit, train, and provide support to teachers who work with immigrant students.

All teachers of immigrant students—those who teach English and those who teach other academic subjects—need training to develop the most effective tools for imparting knowledge to students with limited English proficiency. Teachers also need help in understanding how best to involve immigrant parents who may themselves be limited in their command of English. Schools that have been effective in involving immigrant parents in their children's education tend to be more effective in retaining and educating students. To promote such involvement, teachers must be sensitive to differences in language and culture that may impede an immigrant parent's ability to participate in school activities.

The Commission supports immigrant education funding that is based on a more accurate assessment of the impact of immigration on school systems and that is adequate to alleviate these impacts. Urban and rural schools often require federal assistance when confronted with large numbers of immigrant students. Current federal support comes through several unrelated funding streams: some is geared to particular instructional models; some is directed to address impacts of large numbers of new arrivals; however, most comes indirectly through monies targeted to schools with economically disadvantaged children who are performing poorly.

There are costs and responsibilities for language acquisition and immigrant education programs that are not now being met. We urge the federal government to do its fair share in meeting this challenge. The long-run costs of failure in terms of dropouts and poorly-educated adults will be far larger for the nation and local communities than the costs of such programs.

More specifically, we urge the federal government to:

- **Provide flexibility in federal funding for the teaching of English to immigrant students to achieve maximum local choice of instructional model.** The federal government should not mandate any one mode of instruction (e.g., bilingual education, English as a Second Language programs, immersion). Research indicates that no one pedagogical model for English instruction works more effectively than any other. What makes for success are: the commitment of the local school system to educate its English learners;

The Commission supports immigrant education funding that is based on a more accurate assessment of the impact of immigration on school systems and that is adequate to alleviate these impacts.

Washington, DC's public Bell Multicultural High School offers secondary and adult day/evening intensive English classes, vocational programs, career development, dropout prevention, technical preparation, and comprehensive math and science. Bell students have high attendance rates, high advanced placement exam scores, and high rates of continuing on to higher education. Last year counselors assisted more than 30 students to become citizens. Many staff are both immigrant and multilingual and, thus, can both empathize with students' transitions and support Bell's strong native language-maintenance program.

The Carlos Rosario Adult and Career Center in Washington DC. was for 25 years the only DC public school teaching English to adult foreigners, graduating classes as large as 650 students. Closed due to funding constraints, it reopened with private funding in a church in Chinatown. Courses are offered in computer use, nursing assistance, and GED.

well-trained teachers who are adept at English language instruction; involvement of parents; frequent evaluation of student language acquisition; and a plan for timely placements in mainstream programs.

- **Make funding contingent on performance outcomes—that is, English language acquisition and mastery of regular academic subject matter by students served in these programs.** School systems receiving funds because of large numbers of children with limited English proficiency and immigrant children should be held to rigorous performance standards. Incentives should promote—not impede—expeditious placement in regular, English-speaking, classes.

The Commission urges the federal, state, and local governments and private institutions to enhance educational opportunities for adult immigrants. Education for basic skills and literacy in English is the major vehicle that integrates adult immigrants into American society and participation in its civic activities. Literate adults are more likely to participate in the workforce and twice as likely to participate in our democracy. Literate adults foster literacy in their children, and parents' educational levels positively affect their children's academic performance.

The Commission urges the federal, state and local governments and private institutions to enhance educational opportunities for adult immigrants.

According to the 1990 Census, a total of 5.8 million adults reported that they speak English "not well" or "not at all." This number continues to grow because of the entry of non-English-speaking immigrants. Researchers estimate that 600,000 adults with only limited or no English now enter the United States each year. Immigrants who are illiterate even in their native language or who have only a few years of schooling consequently are confined to employment in dead-end jobs.

Adult education is severely underfunded. Available resources are inadequate to meet the demand for adult immigrant education, *The Resources Occupational Training Program in Brooklyn, New York, a nonprofit adult vocational training program, operates as an affiliate of the Catholic Migration Office of the Diocese of Brooklyn. Launched in 1994 with seed money from an Italian businessman, it trains and places 98 percent of its immigrant students in well-paying jobs without government assistance.*

particularly for English proficiency and job skills. Enrollment in adult English as a Second Language classes increased 183 percent from 1980 to 1990; neither classes nor funding have kept pace with demand. In Massachusetts, a state widely recognized for its excellent adult education programs, an estimated 11,000 of the 16,000 on the waiting list for adult basic education are waiting for ESL services.

Three principal problems impede the capacity to expand opportunities for adult education. First, funding to subsidize courses is limited. Many adult immigrants are willing and able to pay some tuition for courses, expecting a positive return on this investment. However, given average income levels of uneducated, unskilled immigrants, they are unlikely to be able to cover the total costs of adult education courses.

Second, teacher training programs are limited, resulting in shortages in the number of qualified teachers. For example, in Massachusetts, there are only two training programs for teachers of ESL to adults and no Masters-level program for teachers of adult basic education. Many schools utilize volunteers to serve as tutors, but there is an insufficient number of trained teachers to provide guidance to these volunteer aides.

The third impediment relates to the general quality of adult education programs. The General Accounting Office [GAO] reported in 1995 that adult education and literacy programs funded by the U.S. Department of Education have no defined objectives, valid assessment instruments, or accurate program data.

In the early part of the twentieth century, state departments of education and local school boards played an active role in the Americanization of immigrants. They committed resources to adult education in evening and weekend classes because they recognized the importance of economic and civic incorporation into their

Responding to requests from its limited English-speaking employees, the United Electric Control Corporation in Watertown, Massachusetts in 1992 launched an educational and vocational skills training program. Employees are given time off from work to take courses in a program that is so successful that it led to the formation of a consortium of Boston area high-technology companies to provide the same services. In this case, the program was given a jump start by a federal workplace literacy program grant.

communities. Similarly, many turn-of-the-century businesses participated in the Americanization movement, recognizing the benefits to their operations accruing from a literate, educated workforce.

There has been a shift away from this once widely-held public perception of immigrant adult education as a local responsibility, with its local community- and school-based programs. The source of funding is federal and state (as compared to kindergarten through grade twelve education that is financed primarily through local taxes). While many local school districts continue to provide classrooms and other resources, others do not. In this setting of excess demand for adult education, volunteers and low-cost options do exist. Access to relatively inexpensive classroom space often is a major impediment to program implementation. But—even though publicly-owned classroom space is often available and unused during evening and weekend hours—such limitations persist.

The Boeing Company and the International Association of Machinists provide training and skills development to current and laid-off workers that includes English as a Second Language and professional English development. Boeing also provided in-kind production services for a community-based organization naturalization video series in eight languages.

In recognition of the benefits they receive from immigration, the Commission urges leaders from businesses and corporations to participate in skills training, English instruction, and civics education programs for immigrants. Religious schools and institutions, charities, foundations, community organizations, public and private schools, colleges and universities also can contribute resources, facilities, and expertise. All of these sectors benefit from having skilled, English-speaking workers and residents. For example, local school systems could open schools after hours to community groups providing English instruction on a volunteer basis, and businesses could provide employees the opportunity for such classes at the jobsite. Such public/private partnerships can contribute in many ways to a greater range of educational opportunities for immigrants.

Maid Bess, a contract apparel business in Salem, Virginia provides free on-site English instruction to its refugee employees with the help of a local refugee resettlement agency. Among its more than 400 employees, 17 national and ethnic groups are represented. On its annual "International Day," all employees are encouraged to dress in the traditional costume of their native country or that of their ancestors.

NATURALIZATION

The Commission believes that the current legal requirements for naturalization are appropriate but improvements are needed in the means used to measure that an applicant meets these requirements.

Naturalization is the most important act that a legal immigrant undertakes in the process of becoming an American. Taking this step confers upon the immigrant all the rights and responsibilities of civic and political participation that the United States has to offer (except becoming President). The Commission reiterates its belief that no action should be taken that detracts from the appeal of citizenship as an opportunity to become a member of the polity. The naturalization process must be credible, and it must be accorded the formality and ceremony appropriate to its importance.

The Commission believes that the current legal requirements for naturalization are appropriate, but improvements are needed in the means used to measure that an applicant meets these requirements.

To naturalize, legal immigrants must meet certain threshold requirements; these have remained remarkably consistent throughout our history. At present, to naturalize, a legal permanent residents must reside in the United States for five years (three years for spouses of U.S. citizens and legal permanent residents who serve in the military); demonstrate the ability to read, write, speak, and understand English; pass a U.S. history and civics exam; be of good moral character; and take an oath of allegiance.

With regard to the specific legal requirements, the Commission supports:

- **Maintaining requirements that legal immigrants must reside in the United States for five years (three years for spouses of U.S. citizens and Lawful Permanent Residents who serve in the military) before naturalizing.** We believe five years is adequate for immigrants to embrace, understand, and demonstrate their knowledge of the principles of American democracy.

The nonprofit Arlington Community Foundation in Virginia funds and organizes grassroots programs to assist immigrants in their transition to American society. It sponsors local community organizations, festivals, and focus groups to identify and address sources of tension between longtime residents and newcomers. It also supports local initiatives to assist immigrant entrepreneurs and parents of school-age children to understand how American institutions work. In 1995, it founded the Washington Partnership for New Americans to encourage naturalization.

- **Improving the mechanisms used to demonstrate knowledge of U.S. history, civics, and English competence.** The Commission believes that the tests used in naturalization should seek to determine if applicants have a meaningful knowledge of U.S. history and civics and are able to communicate in English. The current tests do not adequately assess such understanding or abilities. The civics test, for example, relies on memorization of discrete facts rather than on substantive understanding of the basic concepts of civic participation.

The Arlington County, Virginia, Wilson Center provides education and training for immigrants using federal refugee program funds for language and employment services. It offers citizenship and English as a Second Language classes (focusing on child rearing and family violence). As the school registration center for foreign-born children, it can readily inform immigrants of its services.

INS district offices vary significantly from each other in the methods by which they administer the test and in the threshold number of correct answers needed for passage. In some cases, examiners scale the tests to the perceived educational abilities of applicants. The lack of uniform standards governing whether an applicant has satisfactorily fulfilled the requirements is disturbing. Such inconsistencies pose undue confusion for qualified legal residents and undermine public confidence in the naturalization process.

The Commission believes the tests should be standardized and aim to evaluate a common core of information to be understood by all new citizens. The U.S. history and civics test should assess whether applicants understand the basic principles of U.S. government: for example, what it means to have freedom of speech or the freedom to assemble. The English test should accurately and fairly measure an immigrant's ability to speak, read, and write; the current practice of dictating English sentences for applicants to write is not an effective means of testing English proficiency.

The American Telephone and Telegraph Company in India Hill, Illinois, learned the lengthy naturalization process was of major concern for its employees. It worked with the Chicago INS office to distribute naturalization applications and study guides to employees and provided space for officials to conduct interviews and naturalization ceremonies. A total of 400 employees and their family members became citizens.

INS is now undertaking a full review of its interview and testing criteria, including the content and format of the English and civics portions of the test. The Commission encourages officials responsible for naturalization to consult and enlist the assistance of professional educators, pedagogical experts, and standardized test providers in the development of new history/civics and English standards and tests. Consideration should be given to separating the English reading, writing, and comprehension components from the personal interview. Often, applicants are nervous about making a mistake during the interview and demonstrate less English proficiency than they may have. This separation also would work to the advantage of those responsible for adjudicating applications as interviews would be reserved for applicants who had fulfilled the English and civics requirements, sparing scheduling and interviewing of unqualified applicants.

These new standards will be meaningful only if applied equitably and there is a much greater capacity to monitor the agencies that give the tests. [See below.]

A more predictable and standardized testing process also must include consistent and rational exemptions for elderly legal permanent residents. At present English language exemptions are granted to legal permanent residents aged 50 years or older who have lived in the United States at least twenty years and to those 55 years of age who have resided in the U.S. for at least fifteen years. Special consideration on the civics component is given to naturalization applicants aged 65 or older who have resided in the U.S. for at least twenty years. The Commission supports these exemptions. However, it makes little sense to confer such exemptions on long-term legal residents, yet not on more recent elderly legal residents who have had less time to acquire English proficiency. The Commission calls for a thorough review of the current testing exemptions and urges the Congress to consider additional, narrowly-tailored exemptions to the

The Voter Education Registration and Action Program of the New England Literacy Resource Center in Boston, Massachusetts promotes adult literacy so that its students can take informed action on issues that concern them. The Center is supported by National Institute for Literacy grants under the 1991 National Literacy Act. In the November 1996 election, 467 out of 550 of the program's adult learners—85%—participated.

English requirement for qualified elderly immigrants who have resided in the U.S. for fewer years than required by the current exemptions.

- **Expediting swearing-in ceremonies while maintaining their solemnity and dignity.** Approved applicants must take an oath of allegiance before U.S. citizenship is conferred upon them. Generally, the oath is administered in public ceremonies by federal judges. Most such ceremonies are solemn and dignified public affirmations of a mutual obligation that new Americans and their adopted country make to each other. However, in districts where the federal court has exercised sole jurisdiction to conduct the swearing-in ceremonies, long delays often result from crowded court calendars.

The Commission believes a more expeditious approach to the swearing-in ceremony should be adopted. Timely ceremonies need not sacrifice the ceremonial and traditional aspects of the ceremony that the Commission strongly believes are essential. The Commission believes the solemnity and pomp of the current judicial ceremonies should be maintained and could be enhanced by the inclusion of distinguished speakers. However, would-be citizens who have passed all requirements for naturalization should not be denied timely citizenship because of processing delays in scheduling swearing-in ceremonies.

Until 1990, the federal judiciary had sole jurisdiction to confer citizenship on an approved naturalization applicant. The Immigration Act of 1990, however, transferred authority to confer citizenship to the INS. Within one year, the Judicial Naturalization Amendments of 1991 reinstated the judiciary, albeit in a somewhat modified role. Consequently, judges who choose to exercise sole jurisdiction are granted forty-five days from notification of eligible applicants in which to perform swearing-in ceremonies. Despite the changes instituted by the 1991 Amendments, immigrants typically wait considerably longer to be sworn in as new citizens.

Such delays can have significant consequences for legal residents; they are unable to apply for particular jobs, travel abroad, vote, or receive certain benefits such as Food Stamps and Supplementary Security Income [SSI]. The Commission is concerned that as the number of newly-approved citizenship applicants increases, along with an increasing caseload for the federal judiciary, the federal courts' capacity to perform timely ceremonies may be further hampered.

The Commission recommends that to reduce this waiting time Congress restore the Executive Branch's sole jurisdiction for naturalization. The Executive Branch should continue to work with federal judges as well as other qualified institutions and personnel, such as state courts or Immigration Judges, to ensure that swearing-in ceremonies are consistently conducted in a timely, efficient, and dignified manner. Eminent persons who would add dignity to the ceremony could be invited to participate as well. Standards of conduct should be developed for all such participants to assure, for example, that all remarks are free of partisan politics.

- **Revising the naturalization oath to make it comprehensible, solemn, and meaningful.** Taking the oath is a critical legal step in becoming a naturalized citizen. Its words convey the core meaning of becoming an American citizen. Thus, it is imperative that it be understandable by all who take it. We recommend that those naturalizing be given a written copy of the oath that they can read during the swearing-in and that they can keep as a meaningful memento.

The current oath is not easy to comprehend. We believe it is not widely understood by new citizens. Its wording includes dated language, archaic form, and convoluted grammar. Although the 1952 statute does not prescribe any particular wording, it does require that the oath contain five elements: (1) support for the Constitution; (2) renunciation of prior allegiance; (3) defense of the Constitution against all enemies, foreign and domestic; (4) true faith and allegiance; and (5) a commitment to bear arms or perform noncombatant service when required.

The Commission proposes the following revision of the oath as capturing the essence of naturalization.

> ***Solemnly, freely, and***
> ***without any mental reservation,***
> ***I,* [name] *hereby renounce under oath***
> ***[or upon affirmation]***
> ***all former political allegiances.***
> ***My sole political fidelity***
> ***and allegiance from this day forward***
> ***is to the United States of America.***
> ***I pledge to support and respect***
> ***its Constitution and laws.***
> ***Where and if lawfully required,***
> ***I further commit myself to defend them***
> ***against all enemies, foreign and domestic,***
> ***either by military or civilian service.***
> ***This I do solemnly swear [or affirm],***
> ***So help me God.***[4]

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[4] As is the case under current regulations, when applicants, by reason of religious training and belief or for other reasons of good conscience, cannot swear an oath, they may substitute "solemnly affirm" and delete "so help me God."

The Commission calls for urgently needed reforms to increase the efficiency and integrity of the naturalization process.

The Commission calls for urgently needed reforms to increase the efficiency and integrity of the naturalization process. The vast majority of applicants for naturalization are law-abiding immigrants who contribute to our society. The value of Americanization is eroded whenever unnecessary obstacles prevent eligible immigrants from becoming citizens. Its value also is undermined when the process permits the abuse of our laws by naturalizing applicants who are not entitled to citizenship. For the process of Americanization to succeed, it must provide fair and timely service to legal residents applying for citizenship. It must also earn the trust and confidence of the general public.

In August 1995, the INS launched an initiative to address many of the most serious impediments to naturalization, including a backlog in excess of 300,000 persons and processing times that in larger cities approached four years. Consequently, the Service hired more than 1,000 new personnel, opened several additional branch offices, and established direct mail centers.

While these new resources resulted in record numbers of naturalizations, improprieties in granting citizenship to criminal aliens and fraud in the testing process undermined the goals of the program. It is fair to conclude that the new program revealed many of the structural and managerial weaknesses of the overall naturalization process. Subsequent Congressional hearings and independent investigations demonstrate that many of the most serious problems preceded the new initiative and were exacerbated by the increasing number of applications.

The Department of Justice [DOJ] has launched a variety of new initiatives to reengineer naturalization. DOJ named a Director for Naturalization Operations charged with overseeing management and reform of the naturalization program, including quality assurance and field operations. DOJ also contracted with Coopers and Lybrand to conduct a two-year review of the implementation and administration of the INS naturalization program.

Recognizing steps already are underway to reengineer the naturalization process, the Commission supports the following approaches:

- **Instituting efficiencies without sacrificing quality controls.** In the Commission's 1995 report to Congress, we recommended that the Immigration and Naturalization Service and the Congress take steps to expedite the processing of naturalization applications while maintaining rigorous standards. Two years later, the naturalization process still takes too long, and previous efforts to expedite processing resulted in serious violation of the integrity of the system.

  Because of failures in processing that resulted in the naturalization of ineligible applicants, new procedures subsequently were adopted to reduce inadvertent naturalization of criminal aliens. These new procedures, while not foolproof in barring criminals from naturalizing, have led to processing delays. At the same time, adequate staffing remains a problem. Congress has authorized reprogramming of funds to hire additional staff, but the Committees permitted temporary hires for most of the new positions even though the number of applications remain large. An entirely temporary workforce with short contracts lends instability to a process that already has problems. Instituting a system that has sufficient continuity of personnel and that is both credible and efficient therefore remains a pressing need.

- **Improving the integrity and processing of fingerprints.** Before applicants for naturalization can receive citizenship, they must submit fingerprints for FBI review to determine if the applicants have any disqualifying criminal background.

Problems that delay thousands of applications have been identified in the operation of private agencies taking the fingerprints of applicants for citizenship. These problems include smudged prints and failure of applicants to sign or properly complete forms. Further, no mechanism now exists to verify accurately that the individual submitting the prints is the person whose prints are on the application.

To improve this process, the INS placed restrictions on who may qualify to offer fingerprint services. INS now accepts only fingerprints provided by Designated Fingerprint Services [DFS] trained and authorized by INS. These include local law enforcement agencies, nonprofit agencies, and fingerprint convenience stores. These restrictions may improve the quality of the prints, but do nothing to ensure that fingerprint services consistently and competently verify the identity of individuals whose prints are submitted. While law enforcement agencies have a vested interest in preserving the quality of fingerprints, they have heavy workloads and do not always give high priority to naturalization requests. Nonprofit, community-based organizations appear to take clear fingerprints, but there are questions about their competence to assess the validity of identity documents.

The Commission believes than only service providers under direct control of the federal government should be authorized to take fingerprints. If the federal government does not take fingerprints itself but instead contracts with service providers, it must screen and monitor such providers rigorously for their capacity, capability, and integrity. Failure to meet standards would result in termination of the contract.

- **Contracting with a single English and civics testing service.** The Commission urges a fundamental restructuring of the policies and procedures with which private agencies test naturalization applicants for their knowledge of English and civics.

A 1991 regulation authorized the INS to recognize the results of private for-profit and nonprofit testing services. The rationale was that private testing of civics and English would help to adjudicate citizenship applicants more expeditiously. By 1994, six organizations had been authorized by the INS to administer the citizenship exam.

Congressional hearings during the fall of 1996 revealed disturbing weaknesses in the use of private testers that undermined the integrity of the citizenship test. In response to reports that private, for-profit testing services were engaging in price gouging, cheating, and fraud, INS investigated three sites. In April and May of 1996, INS made some changes to improve testing site oversight Local INS offices were directed to conduct unannounced inspections of citizenship-testing affiliate locations if the office did not already have an inspection plan in place. The congressional hearings revealed that private testers continued to be inadequately supervised or disciplined by either INS or their parent company.

The Commission recommends that the federal government contract with one national and respected testing service to develop and give the English and civics tests to naturalization applicants. Having one organization under contract should help the government substantially improve its oversight. Moreover, continuity with a highly-respected and nationally-recognized testing service will help ensure a high quality product.

- **Increasing professionalism**. While many naturalization staff are highly professional in carrying out their duties, reports from district offices, congressional hearings, and complaints from naturalization applicants demonstrate continued dissatisfaction with the quality of naturalization services. The Commission believes that a culture of customer-oriented service must be developed.

  Recent audits point to very high levels of noncompliance with established practices and excessive error rates even in such basic tasks as filling in the proper names and identifying numbers on forms. Mistakes pose two serious problems for the naturalization process. First, legitimate applicants for naturalization face unnecessary delays while clerical and other mistakes are corrected. Second, ineligible applicants, including felons, may be able to obtain citizenship through administrative error. While INS must pursue denaturalization of such improperly naturalized citizens vigorously within legal limits, it is difficult to reverse grants of citizenship once made. Recruitment and training of longer-term staff assigned to adjudicating applications and overseeing quality control would help overcome some of these problems.

- **Improving automation.** According to the INS, the number of naturalization applicants projected for fiscal year 1997 and each of the following few years will exceed 1.8 million. As more and more immigrants apply for naturalization and choose to become part of the American polity, there is a greater need for efficient and accurate recordkeeping. Current systems are inadequate to meet such a demand for service. Both the INS and FBI rely on paper rather than electronic files, which is inefficient and subject to permanent loss or misplacement of documents. The inability of INS to provide accurate data on the number of recently-naturalized citizens who had undergone full background investigations is a particularly glaring example of the present system's vulnerabilities. The costs to applicants and to INS credibility are significant. The Commission is encouraged by plans to develop linkages among data sources related to naturalization. The Commission recommends continued funding for an up-to-date, advanced, electronic automation system for information entry and recordkeeping.

- **Establishing clear fee and other waiver guidelines and implementing them consistently.** Under current law, the Attorney General is authorized to grant fee waivers to naturalization applicants. The Commission has received accounts of legitimate requests being denied. The prospective increase in naturalization fees may precipitate more fee waiver requests or perhaps discourage applicants. Clear guidelines and consistent implementation are needed to ensure that *bona fide* requests are granted, while guarding against abuse.

The 1994 Immigration and Nationality Technical Corrections Act provided exceptions to the English proficiency and civics requirements for naturalization for persons with physical or developmental disabilities or with mental impairments. After extensive consideration and opportunities for public comment, the INS published its final rule in March 1997.

The new rule emphasizes medically determinable standards that promote integrity and fairness. Further, the new rule does not confer a blanket exemption. Hence, judging whether an applicant's disability would bestow a disability waiver is inherently complex.

The Commission believes that rigorous and equitable interpretation of the new rule will require that adjudicators are properly trained. Further, implementation must be strictly monitored to ensure that exceptions allowed by law are made available to otherwise qualified legal residents. Finally, to ensure that the qualifications and procedures are understood and adhered to, the Commission recommends a thorough public education effort.

A CREDIBLE FRAMEWORK FOR IMMIGRATION POLICY

In our previous reports, the Commission defined a credible immigration policy "by a simple yardstick: people who should get in do get in, people who should not get in are kept out: and people who are judged deportable are required to leave." By these measures, the U.S. has made substantial, but incomplete, progress. What follows are the Commission's recommendations for comprehensive reform to achieve more fully a credible framework for immigration policy.

LEGAL PERMANENT ADMISSIONS

The Commission reiterates its support for a properly-regulated system for admitting legal permanent residents.[1] Research and analyses conducted since the issuance of the Commission's report on legal immigration support our view that a properly regulated system of legal permanent admissions serves the national interest. We reiterate that such a system enhances the national benefits while protecting against potential harms.

The Commission reiterates its support for a properly-regulated system for admitting legal permanent residents.

This position is supported by a recent report we commissioned from the National Research Council on the impacts of immigration.[2] The panel concluded that "immigration produces net economic gains for domestic residents" in the form of increased productivity and reduced consumer prices. The benefits go well beyond economic ones, however. The panel also identified social and cultural gains resulting from immigration, particularly through the entry of highly-talented immigrants who choose to live and contribute to the United States. The report continues: "Even when the economy as a whole gains, however, there may be losers as well as gainers among different groups of U.S. residents." The principal "gainers" are the immigrants themselves, owners of capital, higher-skilled workers who are complements to most immigrants (who are themselves lower-skilled) and consumers. The principal "losers" are the low-skilled workers who compete with immigrants and whose wages fall as a result. On a fiscal basis, the panel found national-level net contributions of tax revenues resulting from immigration, but the panel also identified significant net fiscal costs to the taxpayers of states with large number of immigrants. These high fiscal impacts are due, particularly, to the presence of sizeable numbers of lesser-skilled immigrants whose tax payments, even over a lifetime, are insufficient to cover their use of services.

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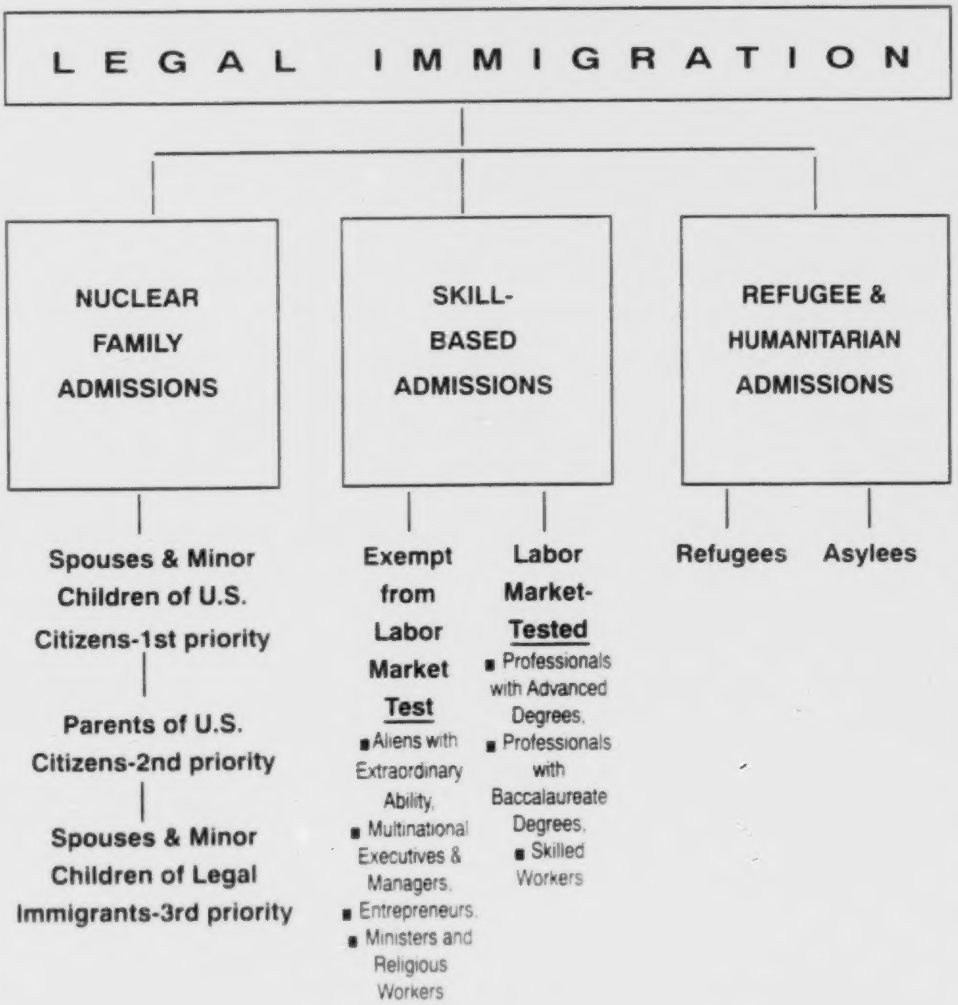
[1] For a full explanation of the Commission's recommendations see *Legal Immigration: Setting Priorities*, 1995. See Appendix for summary of Commissioner Leiden's dissenting statement.

[2] National Research Council. (J.P. Smith, B. Edmonston, eds.). 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* Washington, DC: National Academy Press. 62.

The Commission urges reforms in our legal immigration system to enhance the benefits accruing from the entry of newcomers while guarding against harms, particularly to the most vulnerable of U.S. residents—those who are themselves unskilled and living in poverty. More specifically, the Commission reiterates its support for:

- **A significant redefinition of priorities and reallocation of existing admission numbers to fulfill more effectively the objectives of our immigration policy.** The Commission's more specific recommendations on priorities and procedures for admission stem not only from the above analysis of the effects of immigration but also from our review of the workings of the admission system. We argued in our 1995 report that the current framework for legal immigration—family, skills, and humanitarian admissions—makes sense. However, the statutory and regulatory priorities and procedures for admissions do not support the stated intentions of legal

Proposed Tripartite Immigration System



LEGAL IMMIGRATION

NUCLEAR FAMILY ADMISSIONS

- Spouses & Minor Children of U.S. Citizens-1st priority
- Parents of U.S. Citizens-2nd priority
- Spouses & Minor Children of Legal Immigrants-3rd priority

SKILL-BASED ADMISSIONS

Exempt from Labor Market Test

- Aliens with Extraordinary Ability,
- Multinational Executives & Managers,
- Entrepreneurs,
- Ministers and Religious Workers

Labor Market-Tested

- Professionals with Advanced Degrees,
- Professionals with Baccalaureate Degrees,
- Skilled Workers

REFUGEE & HUMANITARIAN ADMISSIONS

- Refugees
- Asylees

immigration—to reunify families, to provide employers an opportunity to recruit foreign workers to meet labor needs, and to respond to humanitarian crises around the world. During the two years since our report on legal immigration, the problems in the legal admission system have not been solved. Indeed, some of them have worsened as is discussed below.

We believe current immigration levels should be sustained for the next several years while the U.S. revamps its legal immigration system and shifts the priorities for admissions away from extended family and toward nuclear family and away from unskilled and toward higher skilled immigrants. Thereafter, modest reductions in levels of immigration—to about 550,000 per year, comparable to those of the 1980s—will result from the changing priority system.

The Commission continues to believe that legal admission numbers should be authorized by Congress for a specified time (e.g., three to five years) to ensure regular, periodic review and, if needed, change by Congress. This review should consider the adequacy of admission numbers for accomplishing priorities. It also should consider the economic and other domestic needs and capacities of the United States to absorb newcomers.

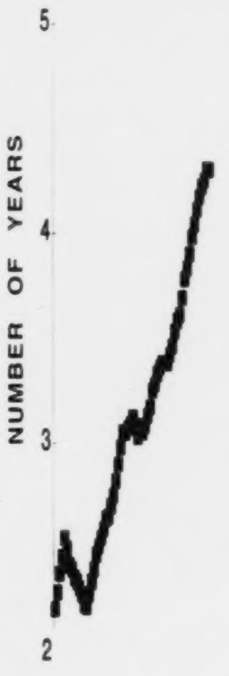
- **Family-based admissions that give priority to nuclear family members—spouses and minor children of U.S. citizens, parents of U.S. citizens, and spouses and minor children of legal permanent residents—and include a backlog clearance program to permit the most expeditious entry of the spouses and minor children of LPRs.**

The Commission recommends allocation of 550,000 family-based admission numbers each year until the large backlog of spouses and minor children is cleared. The backlog, which numbers more than 1 million persons, consists of the nuclear family members of legal immigrants who married after the U.S. spouse became a permanent resident, as well as spouses and minor children of aliens legalized under IRCA (most of whom are now eligible to naturalize). Numbers going to lower priority categories (e.g., adult children, siblings, and diversity immigrants), should be transferred to the nuclear family categories. Thereafter Congress should set sufficient admission numbers to permit all spouses and minor children of citizens and LPRs to enter expeditiously.

Since the Commission first reported its findings on legal admissions, the problems associated with family-based admissions have grown. In 1995, the wait between application and admission of the spouses and minor children of LPRs was about three years. It is now more than four years and still growing.[3]

Various statutory changes enacted in 1996 make it all the more important that Congress take specific action to clear the backlog quickly to regularize the status of the spouses and minor children of legal permanent residents in the United States. In an effort to deter illegal migration, Congress expanded the bases and number of grounds upon which

Waiting Time for Spouses and Minor Children of LPRs (FB-2A)



Source: DOS Visa Office *Visa Bulletin* (1992-1997).

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[3] It appears that the priority date (i.e., the cut-off date by which an approved petition must have been filed) has moved forward as much as it has only because of delays in processing applications for adjustment of status within the United States. When it became clear that INS could not keep up with the adjustment backlog, the Department of State moved up the priority date to continue processing visas overseas. As many of the adjustment applications are still to be processed, it is likely that there will be very little movement on the priority date during the next several months.

persons may be denied legal status because of a previous illegal entry or overstay of a visa. Most important, a person unlawfully present for more than six months will be inadmissible for three years, and those unlawfully present for more than one year will be inadmissible for ten years.[4] If Congress decides not to renew the provision [known as Section 245(i)] that permits these individuals to adjust status within the United States, they will be unable to become legal immigrants even if they meet all other admission criteria.

An unknown, but believed to be large, number of spouses and minor children awaiting legal status are unlawfully present in the United States. While the Commission does not condone their illegal presence, we are cognizant of the great difficulties posed by the four-or-more-year waiting period for a family second-preference visa. U.S. immigration policy should not force legal immigrants to choose between family responsibilities and vows and their continued presence in the United States. The Commission believes no spouse or minor child should have to wait more than one year to be reunited with their U.S. petitioner.

The Commission is also concerned with the impact on nuclear family reunification of the provisions adopted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA] to address perceived abuses in the use of parole. We agree that parole should be used only in exceptional circumstances and that Congress should be involved more directly in decisions to parole large numbers of individuals for permanent residence. We further recognize the validity of efforts to count long-term parolees against worldwide numerical ceilings. However, we do not agree with the IIRIRA provisions that count parolees against family-based admission numbers. Moreover, the language of IIRIRA requires the counting of those admitted with the intention that they reside permanently *and* those who are paroled for short stays but who are not known to have left one year later. For the first time in U.S. law, persons illegally in the U.S. would be counted against legal admission ceilings. This creates a conflict between policies. Moreover, inadequacies in current entry-exit controls mean that some parolees who leave the country will be determined to have remained and will also be counted against the legal admissions ceiling. Because the parole numbers are deducted from the family preferences, the new provisions hold the potential for delaying still further the already unacceptable delays in admission of nuclear family members.

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[4] IIRIRA permits the Attorney General to provide a waiver for spouses and minor children if there is an extreme hardship to the U.S. petitioner. Although standards have not been set for implementing this provision, mere separation from family members generally has not counted as an "extreme hardship" in applying other provisions where extreme hardship is a ground for relief.

The Commission believes that the national interest in the entry of nuclear family members outweighs that of more extended family members. We recognize that others disagree; they argue that the bonds to adult children and adult siblings can be as strong as the bond between spouses and with minor children. They also point to the valuable assistance provided by many extended families in setting up and running businesses and providing child care and other supportive services. Whatever the cultural and economic values attached to each family relationship, however, the far stronger responsibilities to one's spouse and minor children are well established in the U.S. We continue to believe that our family reunification system will remain seriously flawed until the spouses and minor children of LPRs are treated as a priority.

An end to extended visa categories is justified even apart from the large nuclear family backlog. The Commission pointed out in its 1995 report that the extraordinarily large waiting list for siblings of U.S. citizens, and to a lesser extent, adult children undermines the integrity of the legal immigration system.

The backlog for siblings of adult U.S. citizens has stabilized during the past two years, but at a very large level. In January, 1995, there were 1.6 million on the waiting list; as of January 1997, the waiting list was 1.5 million. Except for oversubscribed countries, siblings who applied ten years ago are now eligible to enter. Admissions from the Philippines are of those who applied almost twenty years ago. These extended waiting periods mean that most siblings enter well into their working lives, limiting the time during which they can make a contribution to the U.S. economy. More than one-half of all the siblings and their spouses admitted in FY 1996 were above the age of 45. In other immigration categories, most principals are in their twenties or thirties.

The backlog for adult children is growing. In January 1995, there were about 70,000 unmarried sons and daughters of citizens, 500,000 unmarried sons and daughters of LPRs, and 260,000 married sons and daughters of citizens in the backlog. As of January 1997, the unmarried backlog had grown to more than 90,000 and 575,000, respectively, and the married children backlog is more than 310,000.

A particular concern is the "aging out" of children who were minors at the time of application, but who turned 21 years of age while awaiting their green cards. The Commission proposed in our 1995 report that the Immigration and

Nationality Act [INA] be amended so that "a person entitled to status at the time a petition is approved shall continue to be entitled to that status regardless of his or her age."

- **Skill-based admissions policies that enhance opportunities for the entry of highly-skilled immigrants, particularly those with advanced degrees, and eliminate the category for admission of unskilled workers.** The Commission continues to recommend that immigrants be chosen on the basis of the skills they contribute to the U.S. economy. Only if there is a compelling national interest—such as nuclear family reunification or humanitarian admissions—should immigrants be admitted without regard to the economic contributions they can make. The reunification of adult children and siblings of adult citizens solely because of family relationship is not as compelling.

A number of the NRC report's findings argue for increasing the proportion of immigrants who are highly-skilled and educated so as to maximize fiscal contributions, minimize fiscal impacts, and protect the economic opportunities of unskilled U.S. workers. The NRC research shows that education plays a major role in determining the impacts of immigration. Immigration of unskilled immigrants comes at a cost to unskilled U.S. workers, particularly established immigrants for whom new immigrants are economic substitutes. Further, the difference in estimated fiscal effects of immigrants by education is striking: using the same methodology to estimate net costs and benefits, immigrants with a high school education or more are likely to be net contributors while those without a high school degree are likely to be net costs to taxpayers.

Shifting priorities to higher skilled employment-based immigrants will have a beneficial multiplier effect. The highly-skilled are, in effect, new seed immigrants who will petition for admission of their family members. The educational level of the spouses and children of highly-educated persons tends to be in the same range. Hence, our society benefits not only from the entry of highly-skilled immigrants themselves, but also from the entry of their family.

The Commission's framework for legal skill-based admissions includes two broad categories. The first category would cover individuals who are exempt from labor market tests because their entry will generate economic growth and/or significantly enhance U.S. intellectual and cultural strength without undermining the employment prospects and remuneration of U.S. workers: aliens with extraordinary ability, multinational executives and managers, entrepreneurs, and ministers and religious workers. The second category covers individuals subject to labor market tests, including professionals with advanced degrees, professionals with baccalaureate degrees, and skilled workers with specialized work experience.

In our 1995 report, the Commission recommended allocation of 100,000 admission slots to skill-based immigrants. That number represented an increase of about 10 percent over actual usage of these visas, but a decline from the statutory ceiling of 130,000 admission numbers (i.e., 140,000 minus the 10,000 allocated to lesser skilled workers). We further recommended that unused skill-based admissions carry over to the following year's skill-based admissions.

The trend in admission of skill-based immigrants supports our 1995 recommendations, but also indicates the great need to monitor and revise admission numbers as needed. In FY 1995, 85,000 employment-based immigrants were admitted, including 7,900 unskilled workers. This number was artificially low, however, because of INS delays in adjudicating applications for adjustment of status. In FY 1996, admissions totaled 117,000, including 12,000 unskilled workers. The 100,000 skilled admission numbers recommended by the Commission would have been sufficient to cover the period 1994-1996 (with the carry-over provision). However, if the FY 1996 spike turns out to be real (rather than an artifact of the adjustment of status delays of FY 1995), the number of employment-based visas may need to be revised.

The Commission also continues to recommend changes in the procedures used in testing the labor market impact of employment-based admissions. Rather than use the lengthy, costly, and ineffectual labor certification system, the Commission recommends using market forces as a labor market test. To ensure a level playing field for U.S. workers, employers would attest to having used normal company recruiting procedures that meet industry-wide standards, paying the prevailing wage, and complying with other labor standards. Businesses recruiting foreign workers also would be required to make significant financial investments in certified private sector initiatives dedicated to improving the competitiveness of U.S. workers. These payments should be set at a per-worker amount sufficient to ensure there is no financial incentive to hire a foreign worker over a qualified U.S. worker. Labor certification continues to be a time-consuming, unproductive way to protect U.S. workers from unfair competition from immigrant workers. The Department of Labor has tried to institute reforms that have streamlined the process for certain applications. The result, however, has been to slow down even further other applications that do not meet the streamlining requirements.

- **Refugee admissions based on human rights and humanitarian considerations, as one of several elements of U.S. leadership in assisting and protecting the world's persecuted.**[5] Since its very beginnings, the United States has been a place of refuge. Today, when millions of refugees are displaced because of persecution, human rights violations, or warfare, U.S. leadership in responding to refugee crises is critical. The Commission believes continued admission of refugees sustains our humanitarian commitment to provide safety to the persecuted, enables the U.S. to pursue foreign policy interests in promoting human rights, and encourages international efforts to resettle persons requiring rescue or durable solutions. The Commission also urges the federal government to continue to support international assistance and protection for the majority of the world's refugees for whom resettlement is neither appropriate nor practical.

Admissions to the U.S. should be seen within the context of broader U.S. interests in protecting and assisting refugees worldwide. The Commission believes a comprehensive U.S. refugee policy should be coordinated by an office within the National Security Council [NSC] to serve as the White House focal point for domestic and international refugee and related humanitarian issues: to care for and protect refugees overseas; to resettle the few for whom U.S. resettlement is the only or best option and provide sensible transitional assistance to them; to operate an effective system for protecting *bona fide* asylum seekers in the U.S. while deterring those who are not; and to adopt a humane and effective plan to respond to mass migration emergencies.

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[5] For a full explanation of the Commission's refugee-related recommendations, see *U.S. Refugee Policy: Taking Leadership*, 1997.

The admission of refugees should be divided into two broad priority groups with numbers allocated accordingly. The first priority would be for refugees who are in urgent need of rescue and refugees who are the immediate relatives of persons already living legally in the United States. The second priority would include refugees whose admission is of special humanitarian interest to the United States but who are not in imminent danger where they currently reside. Admission numbers would be sufficient each year to guarantee entry to all *bona fide* applicants within the first priority and an agreed-upon number for the second priority Family members and close household members who are dependent on the principal applicant for financial or physical security should also be included among admissions within this priority system.

The United States should set annual numerical targets—but not a statutory limit—for future refugee admissions. The Commission recommends an improved consultation process that will help ensure that admission numbers and allocations meet U.S. national and international interests. The annual consultations should be strengthened by considering projections of admission levels and priorities for at least two years beyond the fiscal year under immediate consideration. Input should be solicited from a wide range of human rights and humanitarian organizations with knowledge of conditions precipitating the need for resettlement.

The United States also should use an active, inclusive process for identifying and making decisions regarding the admissibility of applicants for resettlement, conferring with a broad set of agencies in identifying possible candidates for resettlement. The U.S. government should confer with a broader set of agencies in identifying possible candidates for resettlement, including international and local human rights organizations, relief agencies providing assistance to refugees, and host governments.

The Commission further believes changes are needed to make the administrative processes for admission more flexible and streamlined in determinations of eligibility in order to respond quickly to refugee crises. Also, refugees should be admitted with LPR status except in cases where there has been inadequate opportunity prior to admission for the admitting officer to thoroughly review the case(s).

The Commission supports a continuing program of assistance to refugees after entry. The current array of assistance and services that characterize the resettlement program should be maintained, but with increased attention to services that prepare refugees for rapid economic self-sufficiency and civic participation. In addition, the federal, state, and local agencies involved in resettlement should develop a national plan for streamlining the program to address the complexity of the funding process and reporting requirements, the overlap of programs and responsibilities, and the lack of clear accountability for the outcomes of the program.

The current public/private partnership in the domestic resettlement program should be continued, but for a three-year trial period their division of responsibility should be more explicit, with (1) the public sector assuming responsibility for refugees eligible for the publicly funded public assistance programs and (2) the private sector being responsible for a limited duration program for refugees not eligible for the mainstream public programs.

The mechanisms by which the refugee program is funded should be strengthened through changes to the Refugee Act: (1) to specify a minimum time period of special refugee cash and medical assistance provided to refugees not eligible for Temporary Assistance for Needy Families [TANF] or Supplemental Security Income [SSI]; (2) to permit the appropriation of "no year" money for the cash and medical assistance portion of the Office of Refugee Resettlement [ORR] budget; (3) to broaden the consultation process to ensure greater consistency between admission decisions and appropriation of funds to support refugee assistance and services; and (4) to establish a domestic emergency fund.

The Commission continues to recommend against denying benefits to legal immigrants solely because they are noncitizens.

The Commission continues to recommend against denying benefits to legal immigrants solely because they are noncitizens. The Commission believes that the denial of safety net programs to immigrants solely because they are noncitizens is not in the national interest. In previous reports, the Commission argued that Congress should address the most significant uses of public benefit programs—particularly, elderly immigrants using Supplementary Security Income—by requiring sponsors to assume full financial responsibility for newly-arriving immigrants who otherwise would be excluded on public charge grounds. In particular, the Commission argued that sponsors of parents who would likely become public charges assume the responsibility for the lifetimes of the immigrants (or until they became eligible for Social Security on the basis of work quarters). We also argued that sponsors of spouses and children should assume responsibility for the duration of the familial relationship or a time-specified period. We continue to believe that this targeted approach makes greater sense than a blanket denial of eligibility for public services solely on the basis of a person's alienage.

Basing eligibility for assistance on citizenship debases citizenship. We encourage immigrants to become citizens in order to participate fully in the civic life of the country. We do not want immigrants to become citizens solely because the alternative is the serious economic hardship that may result if benefits are lost or unavailable. In some cases, categorical denial of eligibility to legal aliens undermines the very purpose of our immigration policy. For example, the United States admits refugees, as noted above, to provide protection against the dangerous situations they encounter in their home countries and first-asylum countries. Some of the most vulnerable refugees requiring such protection are the elderly and disabled who will have the greatest difficulty meeting our naturalization standards.

This is not to deny that elderly and disabled immigrants pose a cost to U.S. taxpayers. The NRC report confirms this fact. By contrast, however, immigrants who come during their prime working years generally do not pose a net cost to the taxpayer over their lifetime. Most of the fiscal impact related to the presence of immigrants comes in the area of education, which can be seen as both a cost and an investment as education has long-term benefits to the United States both in a more skilled workforce and in higher income and resulting tax payments.

The Congress did not accept the Commission's recommendations to preserve the safety net. Some eligibility for elderly and disabled immigrants receiving Supplementary Security Income lost as of the enactment of the welfare reform legislation has been restored as a result of budget negotiations. Eligibility for food stamps and other programs designed for the working poor were not restored, however. And, future immigrants will be ineligible for SSI even if they become disabled after entry and have no other means of support.

The Congress did adopt, but in a modified version, the Commission's recommendation for binding affidavits of support. The 1996 legislation framed the requirement in two ways that differ from the Commission's recommendations. First, the legally-binding affidavit, with its more rigorous requirements regarding the income of sponsors, applies to some persons who are not likely to be public charges but not to others who are likely to require assistance. The affidavits apply to *all* family-based immigrants, not just to those who are likely to be public charges. By contrast, the new affidavit will not be used for other admission categories (for example, diversity immigrants) even if an immigrant is likely to be a public charge.

Second, under the new legislation, the same time periods and requirements apply to everyone who signs an affidavit. The affidavits are in force until the immigrant works forty quarters or becomes a U.S. citizen. The Commission believes the period of responsibility should be geared instead to the family relationship and likely period during which the immigrant may require assistance. For example, the sponsors of an elderly parent would be required to assume a longer (even an indefinite) period of support if the parent is of an age that makes it unlikely that he or she would become self-supporting. The responsibility for a spouse, however, would be for a time-limited period or for the duration of the marriage, whichever is longer. Under the new law, the responsibility of petitioners of younger immigrants is so open-ended that it does not provide a realistic or fair set of obligations. For example, if a U.S. citizen marries a foreign student with a professional degree and a job offer, the U.S. citizen must now take on a open-ended obligation to the foreign student, an obligation that carries on even if the marriage ends in divorce. If the immigrant spouse chooses not to work (and therefore doesn't meet the forty quarters requirement) and not to naturalize, the citizen remains responsible for his or her financial support (at 125 percent of the poverty level) indefinitely. The law has no "good cause" exception.

To conclude, the Commission's recommendations on legal admissions are as relevant today as they were in 1995. The Commission urges the Congress to take the measures needed to reform our legal immigration policies so it best serves the national interest in a well-regulated immigration system.

LIMITED DURATION ADMISSIONS

Persons come to the United States for limited duration stays for several principal purposes: representation of a foreign government or other foreign entities; work; study; and short-term visits for commercial or personal purposes, such as tourism or family visits. These individuals are statutorily referred to as "nonimmigrants." In this report, however, we refer to "limited duration admissions [LDAs]", a term that better captures the nature of their admission. When the original admission expires, the alien must either leave the country or meet the criteria for a new LDA or permanent residence. The term "nonimmigrants" is misleading as some LDAs entering the United States are really in transition to permanent residence, and other LDAs enter for temporary stays and become permanent residents based on marriage or skills.[*]

The benefits of a well-regulated system of LDAs are palpable. LDAs represent a considerable boon to the U.S. economy. The tourism and travel industry (domestic and international) is the second largest employer in the United States and generates 6 percent of the nation's Gross Domestic Product [GDP]. International tourism provides a net trade surplus (dollars international visitors spend here minus dollars U.S. visitors spend outside the U.S.) of $18 billion. Worldwide, the U.S. earned the most from international visitors—more than $64 billion.

Foreign students and workers often enrich the cultural, social, and scientific life of the United States. Our universities gain access to many talented students worldwide, thus maintaining the global competitiveness of the U.S. system of higher education. Foreign students give U.S. students the opportunity to learn about foreign societies

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[*] Certain LDA categories, such as those for fiancé(e)s, intracompany transferees, and specialty workers provide explicit bridges to permanent immigration.

Limited Duration Admissions and Visa Issuances

Class of Admission	Admissions (Entries) 1996	Visa Issuances 1996
All classes*	24,842,503	6,237,870
Foreign government officials (& families) (A)	118,157	78,078
Temporary visitors for business and pleasure (B1, B2)	22,880,270	4,947,899
Transit aliens (C)	325,538	186,556
Treaty traders and investors (& families) (E)	138,568	29,909
Students (F1, M1)	426,903	247,432
Students' spouses/children (F2, M2)	32,485	21,518
Representatives (& families) to international organizations (G)	79,528	30,258
Temporary workers and trainees	227,440	81,531
Specialty occupations (H-1B)	144,458	58,327
Performing services unavailable (H2)	23,980	23,204
Agricultural workers (H-2A)	9,635	11,004
Unskilled workers (H-2B)	14,345	12,200
Workers with extraordinary ability (O1, O2)	9,289	4,359
Internationally recognized athletes or entertainers (P1, P2, P3)	33,633	23,885
Exchange & religious workers (Q1, R1)	11,048	5,946
Spouses/children of temporary workers and trainees (H4, O3, P4, R2)	53,572	38,496
Exchange visitors (J1)	215,475	171,164
Spouses/children of exchange visitors (J2)	41,250	33,068
Intracompany transferees (L1)	140,457	32,098
Spouses/children of transferees (L2)	73,305	37,617

Sources: Admissions: U.S. Immigration and Naturalization Service statistical division. Visa Issuances: U.S. Department of State. 1996. *Report of the Visa Office, 1996*. Washington, DC: DOS, Bureau of Consular Affairs.

*Categories may not equal total because of omitted categories (e.g., fiancé(e)s of U.S. citizens, overlapping Canadian Free Trade Agreement professionals, unknown, NATO officials and professionals, and foreign media).

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and cultures and, on returning home—often to positions of leadership—share their exposure to our democratic values, constitutional principles, and economic system. Foreign workers give employers timely access to a global labor market when they cannot identify or quickly train U.S. workers with knowledge and expertise required for a specific job. These worker programs also help companies conducting business both in the U.S. and internationally to reassign personnel as needed to maintain their competitiveness. As economies become increasingly integrated, companies are attracting more and more U.S. workers abroad as well.

Yet, LDAs pose problems for U.S. society under two principal circumstances: when the aliens fail to depart at the end of their legal stay; and when they present unfair competition to U.S. workers. The first problem is an enforcement one. Although overstayers represent a minute portion of the LDAs admitted each year, they are a significant part of the illegal immigration problem. The Immigration and Naturalization Service estimates that as many as 40 percent of the illegal aliens currently in the country originally entered with LDAs, many as short-term visitors. An equally pressing problem is the current inability to track the continued presence and whereabouts of many longer-term LDAs, particularly foreign students, after their arrival in the United States. This lack of capacity to monitor their presence exacerbates the problems of overstay and other violations of their legal status.

The second issue arising in limited duration admissions relates to the criteria for admission of foreign workers and the procedures used to determine their impact on U.S. workers. A proper balance must be struck in the LDA system between enhancing the productivity and global competitiveness of the U.S. economy through access to foreign workers and protecting U.S. workers against unfair competition.

The availability of foreign workers may create a dependency on them. It has been well-documented that reliance on foreign workers in low-wage, low-skill occupations, such as farm work, creates disincentives for employers to improve pay and working conditions for American workers. When employers fail to recruit domestically or to pay wages that meet industry-wide standards, the resulting dependence—even on professionals—may adversely affect both U.S. workers in that occupation and U.S. companies that adhere to appropriate labor standards. For many of the foreign workers, even wages and working conditions that are very poor by U.S. standards are much better than those available at home. In a few egregious cases, businesses have hired temporary foreign workers after laying off their own domestic workforce.

The Immigration Act of 1990 imposed numerical limits on two employment categories where such dependence was feared: H-1B (specialty workers) is capped at 65,000 per year, and H-2B (unskilled workers) is capped at 66,000 per year. While the H-2B category is far from its numerical limits, the statutory cap on annual H-1B admissions was reached for the first time in FY 1997. INS announced in August 1997 the formation of a waiting list because approved workers would be ineligible to enter until the start of the next fiscal year. If the trend in applications continues, the cap is likely to be reached even earlier in FY 1998. Hence, employers petitioning late in the year would be required to wait for the admission of approved workers.

The current business users of the H-1B tend to fall into two distinct categories. One group of employers is clearly unlikely to become dependent on foreign workers but potentially is adversely affected by the numerical limits. These employers tend to hire relatively few foreign workers (for example, measured as a proportion of their overall workforce). Generally, they have identified specific foreign workers whose specialized skills are needed. Often, the company has done extensive recruitment in the United States and has been unable to find qualified workers with the specific skills they seek. Because foreign workers represent a relatively small proportion of their workforce, there is little risk that foreign hires will cause either job displacement or wage depression for U.S. workers.

A second group of employers includes companies that make extensive use of H-1B professionals (again, as measured by proportion of their workforce). Sometimes, they seek approval in the same application for a large number of foreign workers who share minimal professional qualifications. But even within this more dependent group, there is variation in the risk posed by the importation of foreign workers to U.S. workers. Some employers recruit domestically or take other steps to employ U.S. workers, but they are unable to find sufficient professionals to fill their needs. Other employers recruit exclusively overseas and make no effort to employ qualified U.S. workers. They may utilize the H-1B workers in their own operations or contract the foreign workers to other employers.

Under current law, the numerical limits, and now required waiting time, pertain equally to the employer who has few foreign workers and the employer who has only foreign workers. Similarly, the same provisions apply to the employer who has recruited extensively within the United States and been unable to find a worker with the needed specialized skills and to the employer who does no domestic recruitment.

The recommendations presented in this report seek to maximize the potential benefits for the U.S. economy and society resulting from the admission of LDAs while minimizing the potential negative effects. They build on—and in some cases reinforce—the Commission's previous recommendations for reforming the permanent legal immigration system. The overarching goal is to maintain the advantages that accrue to American society from entry of LDAs while protecting the legitimate interests of American workers and businesses from unfair competition.

Principles for a Properly-Regulated System

The Commission believes that LDA policy should rest on the following principles:

- **Clear goals and priorities**. LDA policy should clearly differentiate the goals of each set of visa categories, with procedures that reflect the requirements of each type of visa and subsequent admission. With more than forty different LDA visas provided for under current law, as discussed below, it is often difficult to identify how the goals of one category differ from those of others.

- **Systematic and comprehensible organization of LDA categories**. The statutory definitions, criteria, and procedures for visas and admission have developed in an *ad hoc* fashion. There is now accumulation of more than forty different LDA visas (subsumed under nineteen alphabetical headings), including overlapping categories for students, workers, and other visitors, as well as additional visas added to address the concerns of specific interest groups. Simplification of the system would enable businesses, educators, persons with LDAs, government officials, and the general public to understand more clearly the requirements for visa application and admission and the responsibilities of the persons with LDAs and their sponsors. Administration of the LDA system could be simplified, with attendant reduction in cost and confusion.

- **Timeliness, efficiency, and flexibility in implementation**. LDA policy should be implemented in a timely and efficient way with sufficient flexibility in law and regulations to respond to such domestic considerations as changes in the economy and our educational systems. Because of the time-limited nature of the stay, it is imperative that the system allow admissions decisions to be made expeditiously while retaining a capacity to identify unqualified or fraudulent applications. Similarly, the provisions to protect U.S. workers must allow for timely and efficient mechanisms to investigate complaints and impose appropriate sanctions. While a good part of the LDA system now functions in a timely way, the diffusion of responsibility in foreign worker categories reduces the potential efficiency of that part of the system. The Commission's structural reform recommendations, discussed below, will help address certain inefficiencies.

- **Compliance with conditions for entry and exit and effective mechanisms to monitor and enforce this compliance.** The LDA system should be designed to allow for greater compliance, monitoring, and enforcement. Policies should specify clearly the conditions of entry and the penalties for noncompliance. It is the responsibility of the government, with the cooperation of the private sector where appropriate, to record, track, and report on those entering for limited duration stays. Americans expect that aliens will respect and observe the conditions of their temporary admission, including departure at the end of their lawful stay, and that they will be subject to government enforcement if they fail to comply with the conditions of their admission or if they overstay. Their sponsors (generally, businesses and schools) also bear responsibility for complying with all relevant requirements. Penalties for noncompliance must be commensurate with the offense. The current system does not yet have exit controls in place. In sum, the LDA system should meet a "truth-in-advertising" test.

- **Credible and realistic policies regarding transition from LDA to permanent immigrant status.** Realistic policies should continue to differentiate between LDAs who will remain only temporarily and those who become permanent. For example, LDAs should continue to be able to transition to immigrant status as expeditiously as possible if they enter *bona fide* marriages with U.S. citizens or meet the justifiably high education, skill standards, and prescribed labor market tests of the permanent skill-based immigration categories.

- **Protection of workers from unfair competition and of foreign workers from exploitation and abuse**. LDA worker categories present special challenges in ensuring that U.S. workers are protected from unfair competition while legitimate foreign workers are protected from exploitation. Any system of LDA admissions must include protections for both U.S. and foreign workers, protections that are commensurate with the risk of unfair competition or abuse that the specific category presents. For example, lesser-skilled workers (whether American or foreign) who are newly entering the workforce and whose skills are easily replaced are generally more vulnerable—both to displacement and exploitation—than are more highly-skilled, specialized workers. Businesses that contract out their foreign workers to other businesses pose a greater risk for labor market violations because of the greater diffusion of employer responsibility. Also, employees of firms whose workforces consist primarily of temporary foreign workers, particularly from low-wage countries, are more vulnerable to exploitation; these foreign workers may be used to displace American workers because of their fear that any complaint about wages and working conditions might lead to deportation.

- **Appropriate attention to limited duration admission policies in trade negotiations.** Important policy decisions on admission of temporary workers occurred during negotiations on the North American Free Trade Agreement [NAFTA] and the General Agreement on Trade in Services [GATS]. Some are concerned that these treaty obligations restrict the capacity to reform our LDA policies by locking current immigration law into place or establishing minimum requirements to which changes in immigration law must adhere. In the future, both the Administration, in negotiating trade agreements, and the Congress, in passing enabling legislation, should assess more carefully the long-term ramifications of trade negotiations for immigration policy. The aim should be to ensure that options for future immigration reform are not unknowingly foreclosed.

The following recommendations aim at maximizing the potential benefits accruing from admission of LDAs while minimizing the potential harmful effects.

The Commission recommends a reorganization of the visa categories for limited duration stays in the United States to make them more coherent and understandable.

Framework

The Commission recommends a reorganization of the visa categories for limited duration stays in the United States to make them more coherent and understandable. The Commission recommends that the current proliferation of visa categories be restructured into five broad groups: official representatives; short-term visitors; foreign workers; students; and transitional family members. Subcategories of these groups may be appropriate in some cases. This reorganization reflects such shared characteristics of different visa categories as entry for like reasons, similarity in testing for eligibility, and similar duration of stay in the United States.

The definitions and objectives of the five limited duration admission groups would be:[7]

- **Official representatives** are diplomats, representatives of or to international organizations, representatives of NATO or NATO forces, and their accompanying family members. The objective of this category is to permit the United States to admit temporarily individuals who represent their governments or international organizations. The presence of official representatives in the United States is based on reciprocity; the United States expects similar treatment for its own persons in similar capacities abroad. Under current law, these individuals are admitted under the A and G visas. For the most part, members of these groups are admitted to the United States for the duration of their status as official representatives.

- **Short-term visitors** come to the United States for commercial or personal purposes. In 1995 alone, an estimated 43.5 million inbound visitors from other countries spent $76 billion on travel to and in the United States (on U.S. flag carriers, lodging, food, gifts, and entertainment).* This supports the U.S. national interest in encouraging tourism and business exchange. The majority of short-term visitors enter the United States under the visa waiver program, which is available for nationals of countries demonstrating little visa abuse. (For these nationalities, visas are required for all other purposes). "Nonwaiver" nationalities must possess a B visa for tourism or business, or a C visa for transit. Some short-term visitors also enter with the J visa if they are sponsored by the U.S. Information Agency [USIA] or other U.S. government agency. Short-term visitors generally have little or no effect on the U.S. labor market as they are severely limited in what they can do in the United States. Under current law, waiver visitors are admitted for ninety days, with no option for extension; visitors admitted with B visas are normally authorized a six-month stay, with flexibility to apply for another six months. Those in transit with C visas are given up to twenty-nine days' stay. The majority of visitors by their own volition stay for very short periods. This category also includes informants/witnesses (current S classification) whose temporary entry is in the U.S. national interest because their knowledge is needed for criminal prosecutions.

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[7] The current system includes the J visa for cultural exchange, which is used for a variety of purposes, ranging from short-term visits to study and work. The workers include scholars and researchers, camp counselors, *au pairs*, and various others. Some work activities under the J visa demonstrate a clear cultural or education exchange; other work activities appear only tangentially related to the program's original purposes. Protection of U.S. workers by labor market tests and standards should apply to the latter group in the same manner as similarly situated temporary workers in other LDA categories. The Department of State should assess how better to fulfill the purpose of the Mutual Educational and Cultural Exchange Act of 1961 [Fulbright-Hays Act]. Such an analysis is particularly timely in light of the merger now being implemented between the Department of State and the United States Information Agency, which is responsible for administering the J visa.

- **Foreign workers** are those who are coming to perform necessary services for prescribed periods of time, at the expiration of which they must either return to their home countries or, if an employer or family member petitions successfully, adjust to permanent residence. This category would serve the labor needs demonstrated by U.S. businesses with appropriate provisions to protect U.S. workers from unfair competition. Under current law, numerous types of foreign workers are admissible under the D visa for crewmembers, E visa for treaty traders and investors, H visa for "specialty workers" and other temporary workers, I visa for foreign journalists, L visa for intracompany transferees, O visa for aliens of extraordinary ability, P visa for performers and entertainers, Q visa for participants in cultural exchange programs, and R visa for religious workers. In addition, certain other workers enter under the TN provisions created by NAFTA. There is a second, parallel system under which other workers enter with J visas because they are sponsored by an institution approved by the U.S. Information Agency to engage in cultural exchange. Some of these J workers are paid by their own governments or home institutions whereas others receive compensation from the U.S. institutions and businesses employing them. Also included as foreign workers are trainees, that is, individuals receiving on-the-job training by working in U.S. institutions. The present multiplicity of LDA work categories could be rationalized and made to parallel similar immigrant visa categories. [See below for specific recommendations regarding foreign workers.]

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* The 43.5 million visitors include the admission entries of individuals from countries where a visa or visa waiver is required as well as those from Canada (no visa, visa waiver, or border crossing card required) and Mexico (border crossing card required).

- **Students** are persons who are in the United States for the purpose of acquiring either academic or practical knowledge of a subject matter. This category has four major goals: to provide foreign nationals with opportunities to obtain knowledge they can take back to their home countries; to give U.S. schools access to a global pool of talented students; to permit the sharing of U.S. values and institutions with individuals from other countries; and to enhance the education of U.S. students by exposing them to foreign students and cultures. Students now enter under at least three visa categories: F visa for academic students; J visa, also for academic students (but generally including those whose education is paid by their own government or the U.S. government rather than themselves); and M visas for vocational students.

- **Transitional family members** include fiancé(e)s of U.S. citizens. These individuals differ from other LDAs because they are processed for immigrant status, although they do not receive such status until they marry in the U.S. and adjust. The Commission believes another category of transitional family members should be added: spouses of U.S. citizens whose weddings occur overseas but who subsequently come to the U.S. to reside. At present, a U.S. citizen cannot petition for the admission of a spouse until after the marriage. Months often pass before the foreign spouse can come to the U.S. Under the Commission's plan, the newlywed should be permitted to enter the U.S. under a transitional family visa and then complete the paperwork for legal permanent resident status.

Short-Term Visitors

The Commission recommends that the current visa waiver pilot program for short-term business and tourist visits be made permanent upon the implementation of an entry-exit control system capable of measuring overstays. A permanent visa waiver system requires appropriate provisions to expand the number of participating countries and clear and timely means for removing those countries that fail to meet the high standards reserved for this privilege. Congress should extend the pilot three years while the control system is implemented.

The Commission recommends that the current visa waiver pilot program for short-term business and tourist visits be made permanent upon the implementation of an entry-exit control system capable of measuring overstays.

Most observers recognize that the waiver has been a positive factor in increased tourism and trade and in less processing time for many travelers at ports of entry. More than one-half of the short-term visitors from waivered nationalities come to the U.S. under the waiver, and INS reports little overstay or other immigration violations from these visitors. The Department of State [DOS] has been able to reallocate its relatively high-cost overseas resources to areas that need greater attention, such as increased antifraud efforts, coping with the Diversity Visa workload, and staffing new posts in the former Soviet Union. A key factor in the success of the waiver program is the electronic sharing of "watch list" data of persons ineligible for visas between the Department of State and INS on an almost immediate basis. Being able to screen visitors arriving without visas at ports of entry serves the fundamental purpose of ensuring that statutorily ineligible aliens are not admitted to the United States.

Foreign Workers

Each year, more foreign workers enter the United States as LDAs for temporary work than enter as skill-based immigrants. In FY 1996, the Department of State issued almost 278,000 limited duration worker visas, including those for spouses and children. (Other LDA workers who changed status within the United States are not reflected in these statistics. Also not considered are LDA foreign students working in the United States during their course of study or as part of their practical training, or researchers entering under J visa programs.) By contrast, only 117,000 immigrant visa issuances and domestic adjustments of status in worker categories were recorded in FY 1996, far less than the legislated limit of 140,000.

The Commission recommends that the limited duration admission classification for foreign workers include three principal categories: those who, for significant and specific policy reasons, should be exempt by law from labor market protection standards; those whose admission is governed by treaty obligations; and those whose admission must adhere to specified labor market protection standards. Under this recommendation, LDA worker categories

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would be organized around the same principles that guide permanent worker categories. LDA workers would be subject to rigorous tests of their impact on the labor market unless they are exempt from these tests because their admission will generate substantial economic growth and/or significantly enhance U.S. intellectual and cultural strength and pose little potential for undermining the employment prospects and remuneration of U.S. workers.

Within the labor market protection standards group, criteria for admission are consistent with the potential adverse effect of given categories of workers. The Commission believes adverse impact is broadly related to educational and skill level of the affected workers. Although there sometimes is an adverse effect from even the most highly-skilled and experienced foreign workers, the benefits of such workers are usually large to American society as a whole. They are likely to enhance the U.S. national interest through the generation of economic activity, including the creation of jobs. In general, the higher the levels of education and skill required in a given occupation, the more likely U.S. workers will be able to compete successfully with workers from abroad. Even at the very highest levels of skill and education, however, this generalization fits some high-skill occupations, but not others.

Entry-level professionals and lesser-skilled workers pose somewhat greater risk of displacing U.S. workers because their work can more likely substitute for that of U.S. workers. If they accept lower wages and benefits or poorer working conditions, they present unfair competition to U.S. workers and their employers may gain an unfair advantage over other U.S. employers. Similarly, unskilled foreign workers present the greatest potential for adverse impact because they are competing with some of the most vulnerable of American workers. Accordingly, the Commission proposes different subcategories with labor market protection standards commensurate with the risks we believe are posed by the workers.

- **Those exempt by law from labor market protection standards** because their admission will generate substantial economic growth and/or significantly enhance U.S. intellectual and cultural strength and pose little potential for undermining the employment prospects and remuneration of U.S. workers. These include:

Individuals of extraordinary ability in the sciences, arts, education, business, or athletics, demonstrated through sustained national or international acclaim and recognized for extraordinary achievements in their field of expertise. These individuals now enter under the O visa. This category is comparable to the first priority in our permanent resident system. The U.S. national interest is well served by entry of individuals at the very top of their chosen fields who can contribute during their temporary stay to U.S. economic growth and intellectual and cultural strength.

Managers and executives of international businesses (current L visa), also comparable to the first priority in the legal permanent resident system. The global competitiveness of U.S. businesses is enhanced by the capacity of multinational corporations to move their senior staff around the world as needed. Often, there is only temporary need for a transfer, although permanent relocation may later be required. Under current law, the person with a LDA visa must have been employed by the firm, corporation, affiliate or subsidiary continuously for one year within the three years preceding the application for admission. As discussed below, the Commission believes greater safeguards must be in place to ensure that only *bona fide* international businesses benefit from this policy.

Professors, researchers and scholars whose salary or other compensation is paid by their home government, home institution, or the U.S. government in a special program for foreign professors, researchers, and scholars. Each year, professors, researchers, and scholars enter the United States on sabbatical from their own universities or research institutes, often with a J visa. Also in this category are foreign members of research teams cofunded by the United States and other countries. These individuals present substantial benefits to the United States in the expertise and resources they bring, and they pose no threat of displacement of U.S. researchers as their salaries are from foreign sources or they enter under a U.S. government-funded program, such as the Fulbright Program, whose resources are earmarked through an appropriation process for foreign researchers and scholars.

Religious workers, including ministers of religion and professionals and other workers employed by religious nonprofit organizations in the U.S. to perform religious vocations and religious occupations. Under current law, religious workers must have had at least two years' prior membership in the religious organization (current R visa).

Members of the foreign media admitted under reciprocal agreements (current I visa). The U.S. benefits from the presence of members of the foreign media who help people in their countries understand events in the United States. Just as we would not want our media to be overly regulated by labor policies of foreign governments, the United States extends the same courtesy to foreign journalists working in the U.S.

- **Foreign workers whose admission is subject to treaty obligations.** This includes treaty traders, treaty investors, and other workers entering under specific treaties between the

U.S. and the foreign nation of which the alien is a citizen or national. Under the provisions of NAFTA, for example, Canadian professionals are not subject to numerical limits or labor market testing; Mexican professionals continue to be subject to labor market tests, but will be exempt from numerical limits in 2003.

- **Foreign workers subject by law to labor market protection standards.** These are principally:

Professionals and other workers who are sought by employers because of their highly-specialized skills or knowledge and/or extensive experience. Included in this category are employees of international businesses who have specialized knowledge (now admitted under the L visa) and professionals (now covered by the H-1B visa). A diverse range of individuals may be admitted in this category, including, but not limited to, university faculty and researchers with advanced degrees, accountants and lawyers with specialized knowledge of the tax and legal codes of other countries, and electrical engineers and software systems engineers with specialized knowledge needed for systems design. This category would also cover highly-skilled workers without professional degrees if they have substantial experience in their occupation. This category includes as well aliens now admitted under the H-1B visa who have a bachelor's degree but little specialized expertise or experience.

Trainees admitted to the United States for practical, on-the-job training in a variety of occupations. They now enter through the H-3 visa, practical training arrangements under the F visa, and the J visa provisions pertaining to physicians seeking graduate medical education and to some researchers with J visas engaged in post-doctoral studies. All of these groups have in common work in U.S. institutions as part of a training program. They are paid U.S. wages and, in many cases, are not readily distinguished from U.S. residents in the same type of on-the-job training activities.

Institutions petitioning for foreign workers as trainees would be required to demonstrate that the principal purpose of the program is training by showing a significant educational component to the work experience. Trainees would be paid the actual wages provided to U.S. trainees in similar programs. The trainees would be admitted for the specified duration of the training program. For example, a foreign physician admitted for graduate medical education would be admitted for the period of the specific residency program.

Artists, musicians, entertainers, athletes, fashion models, and participants in international cultural groups that share the history, culture, and traditions of their country. This category includes aliens now admitted under the P visa and Q visa, as well as fashion models admitted under H-1B visa, and athletes, musicians and other performers admitted under the H-2B visa.

Lesser-skilled and unskilled workers coming for seasonal or other short-term employment. Such worker programs warrant strict review, as described below. This category includes aliens now admitted with H-2A and H-2B visas. Requests for admission of unskilled and lesser-skilled workers should be met with heightened scrutiny. Temporary worker programs for lesser-skilled agricultural workers exert particularly harmful effects on the United States. The Commission remains opposed to implementation of a large-scale program for temporary admission of lesser-skilled and unskilled workers along the lines of the *bracero* program. Having examined the issue further during our consultations on LDA issues, we reaffirm our belief that a new guestworker program would be a grievous mistake.

Historically, guestworker programs have depressed the wages and working conditions of U.S. workers. Of particular concern is competition with unskilled American workers, including recent immigrants who may have originally entered to perform the needed labor but who can be displaced by newly entering guestworkers. Foreign guestworkers often are more exploitable than lawful U.S. workers, particularly when an employer threatens deportation if the workers complain about wages or working conditions. The presence of large numbers of guestworkers in particular localities—such as rural counties with agricultural interests—presents substantial costs for housing, health care, social services, schooling, and basic infrastructure that are borne by the broader community and even by the federal government rather than by the employers who benefit from the inexpensive labor.

Despite the claims of their supporters, guestworker programs also fail to reduce unauthorized migration. To the contrary, research consistently shows that they tend to encourage and exacerbate illegal movements by setting up labor recruitment and family networks that persist long after the guestworker programs end. Moreover, guestworkers themselves often remain permanently and illegally in the country in violation of the conditions of their admission.

If new initiatives to reduce illegal migration were at some point to create real labor shortages in agriculture or other low-skill occupations, employers could request foreign workers through the LDA provisions that the Commission proposes for the admission of unskilled workers.

The Commission recommends that the labor market tests used in admitting temporary workers in this category be commensurate with the skill level and experience of the worker.

The Commission recommends that the labor market tests used in admitting temporary workers in this category be commensurate with the skill level and experience of the worker.

- **Employers requesting the admission of temporary workers with highly-specialized skills or extensive experience should meet specific requirements**. Admission should be contingent on an attestation that:

  The employer will pay the greater of actual or prevailing wage and fringe benefits paid by the employer to other employees with similar experience and qualifications for the specific employment in question. Actual wage rates should be defined in a simple and straightforward manner. By this recommendation, we do not intend a complicated, bureaucratically-defined wage analysis. Rather, businesses should be able to use their own compensation systems to determine appropriate wages and benefits for the individual foreign worker hired. The entry of a small number of highly-skilled foreign workers should have minimal effect on these wage scales, which will be determined by the majority of U.S. workers employed by the business. In the absence of a company-wide system that ensures equitable compensation for similarly situated workers, the employer would be required to attest to paying prevailing wages for that job category, wages that are typical of the enterprise or nonprofit company. [See below for recommendations for at-risk employers with a significant proportion of foreign workers.]

  The employer has posted notice of the hire, informed coworkers at the principal place of business at which the LDA worker is employed and provided a copy of the attestation to the LDA worker employed.

The employer has paid a reasonable user fee that will be dedicated to facilitating the processing of applications and the costs of auditing compliance with all requirements. Currently no fees are collected by the Department of Labor [DOL] for either processing or monitoring purposes. In effect, this requires taxpayers to subsidize these programs. To ensure that the employer, and not the foreign worker, pays the user fee, penalties should be imposed upon violators.

There is no strike or lockout in the course of a labor dispute involving the occupational classification at the place of employment.

The employer has not dismissed, except for cause, or otherwise displaced workers in the specific job for which the alien is hired during the previous six months. Further, the employer will not displace or lay off, except for cause, U.S. workers in the specific job during the ninety-day period following the filing of an application or the ninety-day periods preceding or following the filing of any visa petition supported by the application.

The employer will provide working conditions for such temporary workers that are comparable to those provided to similarly situated U.S. workers.

- **Certain at-risk employers of skilled workers [described below] should be required to attest to having taken significant steps—for example, recruitment or training—to employ U.S. workers in the jobs for which they are recruiting foreign workers.** The Commission is aware that some companies now petitioning for H-1B workers recruit exclusively in foreign countries. The Commission believes that U.S. recruitment or hiring efforts will help ensure that qualified U.S. citizens and permanent residents have access to these jobs. We do not recommend, however, that current labor certification processes be used to document significant efforts to recruit. These procedures are costly, time consuming, and ultimately ineffective in protecting highly-skilled U.S. workers.

Under the now expired H-1A visa program for the admission of LDA registered nurses, several alternative steps were described as meeting the requirement of timely and significant steps to employ U.S. workers. These alternatives include: operating a training program for such workers at the facility (or providing participation in a training program elsewhere); providing career development programs and other methods of facilitating workers to become qualified; paying qualified workers at a rate higher than currently paid to other similarly employed workers in the geographic area; and providing reasonable opportunities for meaningful salary advancement. Examples of other steps that might qualify as meeting the timely and significant requirement include monetary incentives, special perquisites, work schedule options, and other training options.

- **Employers requesting the admission of lesser-skilled workers should be required to meet a stricter labor market protection test.** Such employers should continue to be required to demonstrate that they have sought, but were unable to find, sufficient American workers prepared to work under favorable wages, benefits, and working conditions. They also should be required to specify the steps they are taking to recruit and retain U.S. workers, as well as their plans to reduce dependence on foreign labor through hiring of U.S. workers or other means. (For example, sugar cane growers in southern Florida who had petitioned for foreign workers had success in reducing their dependence on H-2A workers through mechanization.) Employers should continue to be required to pay the highest of prevailing, minimum, or adverse wage rates, provide return transportation, and offer decent housing, health care, and other benefits appropriate for seasonal employees.

The Commission recommends that categories of employers who are at special risk of violating labor market protection standards—regardless of the education, skill, or experience level of its employees—be required to obtain regular independently-conducted audits of their compliance with the attestations made about labor market protection standards, with the results of such audit being submitted for Department of Labor review. Certain businesses, as described below, pose greater risk than others of displacing U.S. workers and/or exploiting foreign workers. The risk factors that should be considered in determining whether stricter protection standards must apply include:

- **The employer's extensive use of temporary foreign workers.** Extensive use can be defined by the percentage of the employer's workforce that is comprised of LDA workers. It also can be measured by the duration and frequency of the employer's use of temporary foreign workers.

- **The employer's history of employing temporary foreign workers.** Those employers with a history of serious violations of regular labor market protection standards or specific labor standards related to the employment of LDA workers should be considered as at risk for future violations.

- **The employer's status as a job contracting or employment agency providing temporary foreign labor to other employers.** Risk of labor violations increases as responsibility is divided between a primary and secondary employer.

The Commission recommends that categories of employers who are at special risk of violating labor market protection standards be required to obtain regular independently-conducted audits of their compliance with the attestations made about labor market protection standards.

To ensure adequate protection of labor market standards, such employers should be required to submit an independent audit of their compliance with all statements attested in their application. The independent audits should be done by recognized accounting firms that have the demonstrated capacity to determine, for example, that wages and fringe benefits were provided as promised in the attestation and conformed to the actual or prevailing wages and fringe benefits provided to similarly situated U.S. workers.

The Commission recommends enhanced monitoring of and enforcement against fraudulent applications and postadmission violations of labor market protection standards.

The Commission recommends enhanced monitoring of and enforcement against fraudulent applications and postadmission violations of labor market protection standards. To function effectively, both the exempt and nonexempt temporary worker programs must provide expeditious access to needed labor. The Commission's recommendations build on the current system of employer attestations that receive expeditious preapproval review but are subject to postapproval enforcement actions against violators. To ensure adequate safeguards for U.S. workers, the government agencies responsible for processing applications and enforcing the law must have adequate capacity to identify and act quickly against fraudulent applicants and to monitor postapproval violations of the terms under which foreign workers enter. More specifically, the Commission recommends:

- **Allocating increased staff and resources to the agencies responsible for adjudicating applications for admission and monitoring and taking appropriate enforcement action against fraudulent applicants and violators of labor market protection standards.** These agencies require additional resources to investigate potential fraud among applicants for temporary worker visas as well as violations of the labor market protection standards. Enhancing this capability has significant resource implications, especially if, as the Commission also recommends, such antifraud investigations are undertaken in a manner that does not delay visa adjudication and issuance. Increased costs required for more efficient adjudication of applications can be covered by applicant fees. However, additional costs incurred for more effective investigations of compliance with labor market standards will require appropriated funds.

Sufficient funds should be appropriated to provide the additional resources needed for adequate enforcement by the Department of Labor. These resources should be targeted at employers and contractors at special risk of violating labor market protection standards. Targeting these employers makes the most sense both in terms of economical use of resources and in protection of workers.

The Department of State also must have the capacity to make a proper investigation of cases in which fraud is suspected. This capacity is particularly needed in applications for admission of LDAs in exempt categories to ensure that use of these categories does not become a means of evading labor market protection standards. For example, the visa for intracompany transfers has been abused by persons setting up sham corporations. To comply with appropriate requirements for timely decisions, the government must have the resources to investigate suspected fraud.

- **Barring the use of LDA workers by any employer who has been found to have committed willful and serious labor standards violations with respect to the employment of LDA workers. Further, upon the recommendation of any federal, state, or local tax agency, barring the use of LDA workers by any employer who has been found to have committed willful and serious payroll tax violations with respect to LDA workers.** The law currently provides for such debarment for failure to meet labor condition attestation provisions or misrepresentation of material facts on the application. Implementation of this recommendation would enable penalties to be assessed for serious labor standards violations that are not also violations of the attestations. This would address an issue that has come to the attention of the Commission: the knowing misclassification of some LDA workers as independent contractors, with subsequent failure to pay payroll taxes or other legally-required deductions to the appropriate governmental agency.

- **Developing an enforcement strategy to reduce evasion of the LDA labor market protection standards through use of contractors.** U.S. businesses' growth in contracting-out functions has raised questions of employment relationships and ultimate liability for employment-related violations, including those related to temporary foreign workers. A uniform policy for dealing with these situations is desirable for the enforcement agencies involved, as well as for employers, contractors, and workers.

Conclusion

Limited duration admissions are an important part of immigration policy because they are linked closely to the admission of legal permanent immigrants and to our policies for deterring unlawful migration. This report seeks to treat limited duration admission policy in a comprehensive fashion, building on the recommendations made by the Commission on other aspects of immigration policy. The opportunities presented by the admission of limited duration admissions are significant. With the type of regulation recommended herein, the United States will be able to continue to benefit from these admissions while mitigating potential harmful effects, particularly on vulnerable U.S. populations.

CURBING UNLAWFUL MIGRATION

In its first interim report to Congress this Commission recommended a comprehensive strategy to curb unlawful migration into the United States through prevention and removal.[9] That report focused on deterrence—steps that could prevent illegal entry and unauthorized work. The Commission found that curbing unlawful immigration required: (1) better border management; (2) more effective deterrence of the employment of unauthorized workers; (3) a more consistent benefits eligibility policy; (4) cooperative efforts with source countries; (5) improved data collection and analysis; (6) mechanisms to address migration emergencies; (7) and an improved capacity to remove deportable aliens. The Commission presented detailed recommendations on the first five elements of this strategy (border, worksite, benefits, source country, and data). Our report on refugee policy detailed more specific recommendations on the sixth, migration emergencies.[10] This final report provides more detailed recommendations on the seventh, removals.

Since 1994, the immigration system as a whole has undergone almost unprecedented change. As Congress, the public, and the Administration focused more keenly on immigration, the financial resources available to INS grew from $1.5 billion in FY 1994 to a projected $3.6 billion in FY 1998. During the same period, INS staffing is expected to rise 65 percent, from 17,000 in FY 1994 to more than 28,000 in FY 1998. Once in 1994,[11] and three times in 1996,[12] enactment of major legislation made substantive and substantial changes in laws affecting illegal migration. Many of these statutory and administrative actions sought to implement the Commission's 1994 recommendations.

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[9] *U.S. Immigration Policy: Restoring Credibility*, 1994.

[10] *U.S. Refugee Policy: Taking Leadership, 1997.*

[11] Violent Crime Control and Law Enforcement Act of 1994.

[12] Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA], Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [IIRIRA], Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Deterrence Strategies

The Commission reiterates its 1994 recommendations supporting a comprehensive strategy to deter illegal migration.

The Commission reiterates its 1994 recommendations supporting a comprehensive strategy to deter illegal migration. Despite the additional resources, new policies, and often innovative strategies adopted during the past few years, illegal migration continues to be a problem. In October 1996, INS released its latest estimates of the illegal alien population in the United States: some 5 million undocumented migrants reside in the United States, a number growing by approximately 275,000 annually; 41 percent of these are nonimmigrant overstays; the remaining 59 percent probably entered illegally and without inspection.

The Commission continues to believe that unlawful immigration can be controlled consistent with our traditions, civil rights, and civil liberties. As a nation committed to the rule of law, our immigration policies must conform to the highest standards of integrity and efficiency in the enforcement of the law. We must also respect due process. The Commission believes that the comprehensive strategy we outlined in 1994 continues to hold the best promise for reducing levels of illegal migration. These policies, combined with the structural and management recommendations detailed later in this report, can restore the credibility of our immigration system by both deterring illegal entry and facilitating legal crossings. The Commission emphasizes, however, that no one part of this strategy will, on its own, solve the problem of unauthorized migration.

More specifically, the Commission continues to support implementation of the following deterrence strategies:

- **An effective border management policy that accomplishes the twin goals of preventing illegal entries and facilitating legal ones.** Increased resources for additional Border Patrol officers, inspectors, and operational support, combined with such new strategies as operations "Hold the Line," "Gatekeeper," and "Safeguard," have improved significantly the management of the border where they are deployed. The very success of these new efforts demonstrates that to gain full control, the same level of resources and prevention strategies must be deployed at all points along the border where significant violations of U.S. immigration law are likely to occur.

Implementing effective prevention strategies. In 1994, "Operation Hold the Line" in El Paso, Texas successfully challenged outmoded border control concepts. This effort then served as the model for efforts to control other parts of the border, particularly in the San Diego area. The result, "Operation Gatekeeper," utilizing a strategy described as "Prevention through Deterrence," began on October 1, 1994, and included the commitment of significant new resources and the implementation of innovative new strategies.

Phase I (1994) of the plan had the greatest impact on the area around Imperial Beach in San Diego County. For many years this area accounted for approximately 25 percent of illegal crossings across the southwest border. Utilization of new equipment led to apprehension of greater numbers, and use of new techniques cracked down on alien smuggling rings. Reinforcement of interior checkpoints helped capture those who made it illegally across the border.

Phase II (begun in June 1995) consisted mainly of reinforcing nearby ports of entry seen as the next likely route for aliens whose illegal entry was disrupted by "Operation Gatekeeper." INS placed additional service inspectors at the border, constructed fencing at strategic locations, installed a fingerprint identification system , and added increased lighting at ports of entry.

Phase III (begun in 1996) is designed to extend control over increasing sections of the southwest border as additional staff and equipment become available. The San Diego Border Patrol Sector now has almost 2,000 agents working along the border.

Where these new initiatives have been instituted, the number of people seeking to cross is significantly reduced. On Commission site visits, residents of El Paso and Imperial Beach, the main beneficiaries to date of the new enforcement efforts, cited reduction in vagrancy and petty crime as evidence of reduced illegal crossings through their communities. Preliminary research data reveal that it now takes longer and costs more to enter the United States illegally. Illegal migrants now must now cross through tougher terrain and need the assistance of smugglers. Migrant smuggling increasingly is becoming specialized and professionalized.

The 1997 Binational Study, *Migration Between Mexico and the United States*, reports that a systematic survey of border crossers indicates fewer actual crossers but longer periods of stay in the United States. Thus, it appears that while new border initiatives may deter some movements, they do not fully reduce either levels or impacts of illegal migration. In other words, border control is a necessary, but not sufficient, response to illegal migration.

Evidence also shows that in response to the new initiatives migrants have shifted their entry patterns. For example, as Imperial Beach and its neighboring communities came under control, the numbers of illegal entries rose in eastern San Diego county, the Imperial Valley, Arizona, and south Texas. As the Commission noted in 1994, the immigration system must have the capacity to prevent entry across the southern border. Mobile, rapid response teams initially can help plug holes along the border, but eventually, a prevention capacity must be established in every likely crossing area.

Protecting human rights. Effective border management is not without its human toll, increased violence along the border, as well as deaths resulting from exposure to extreme weather in mountain and desert areas. Both border crossers and Border Patrol agents have been victims of this heightened violence.

Since the implementation of the border initiatives, incidents of violence against the Border Patrol have increased. Incidents of rock-throwing, a hazard to Border Patrol agents for years, have risen. Agents now face random gunfire from south of the border. Beginning in May of 1997, six reported sniper shootings in the San Diego sector were directed at Border Patrol agents. Sustained efforts to protect agents from such violence must be at the top of the policy agenda.

Efforts also must continue to warn potential illegal border crossers—while they are still in their countries of origin—of the increased physical dangers and legal consequences of trying to cross illegally. In particular aliens must be warned of the pitfalls of using smugglers, some of whom abandon border crossers and otherwise abuse them.

Site visits in Mexico demonstrate that already widespread knowledge exists about the new difficulties in entering the United States illegally; misinformation continues to abound as well. Residents in new sending regions such as Oaxaca, traditional sending regions such as Jalisco, and border crossing points such as Tijuana, all spoke of the additional costs and dangers encountered in attempting to cross the border illegally.

The Commission continues to support efforts to monitor and reduce human rights violations and potentially violent confrontations between government personnel and those believed to be seeking illegal entry into the United States. The INS formed a Citizens' Advisory Panel [CAP] that met periodically from February 1994 through February 1997, a year beyond its original expiration date. During that time, the CAP discussed ways and means for averting potential human rights abuses and outright violence by INS employees against aliens. As a result, INS adopted a formal complaint procedure for reporting alleged abuses by government employees to their supervisors and for INS to respond to those complaints. At its February 1997 meeting, the CAP decided to disband in its present form. Discussions are now underway on how best to retain the CAP input in the INS decisionmaking processes, in delivering feedback for training and supervising INS border personnel, and in responding to complaints made against employees.

Improving ports of entry. Additional pressure on ports of entry also accompany enhanced border control. The various initiatives already undertaken provide guidance for other border sites. In San Diego, "Operation Gatekeeper II" included enhanced resources for inspectors to identify individuals entering with fraudulent documents or as impostors. A Port Court was established to place these persons into formal exclusion proceedings. Presiding Immigration Judges made clear to those receiving exclusion orders that they would face criminal penalties if they were apprehended attempting to reenter within one year. To ensure that word went out that these were not idle threats, the U.S. Attorney pledged to prosecute these cases. A relatively small number of persons were apprehended attempting reentry after receiving an exclusion order at the Port Court.

This process has changed somewhat under the new expedited removal procedures mandated by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which took effect on April 1, 1997. Under the new procedures, an alien arriving at a port of entry with fraudulent documents or without documents is referred to secondary inspection, where he or she is advised about expedited removal.[13] If the alien does not indicate a fear of persecution or an intent to apply for asylum, the alien is fingerprinted, photographed and detained until removal, which in San Diego typically takes two processing days. The alien's identity is recorded in the INS IDENT database for immediate and future determination of repeated attempts at unlawful reentry. An immigration officer's determination to remove an alien under the expedited procedures is not subject to administrative or judicial review, except under only very narrow circumstances.

Immigration officials in San Diego report a significant increase in removals as a result of the new expedited removal provisions. These gains in the capacity to remove at the border are no doubt desirable goals for an immigration enforcement agency. However, a more reliable determinant of the extent to which a law actually deters the conduct it seeks to address is the recidivism rate. Thus, the effective communication of the consequences attached to the removal of an alien as a result of the new provisions is a key ingredient of the efficacy of our immigration laws. Without such public education, certain individuals are likely to be undeterred by the type of sanction exacted under the new expedited removal procedures.

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[13] IIRIRA permits the Attorney General to apply the expedited removal provisions to aliens in the U.S. who have not been admitted or paroled [EWIs] and who have not shown to the satisfaction of the immigration officer that they have been continuously present in the U.S. for the two-year period immediately preceding the date of the determination of inadmissibility. At present, the Attorney General has elected not to apply these provisions to EWIs, although she has reserved through regulation, the option to apply the expedited removal provisions at any time, to any alien specified in that section.

Although reliable data on reentry is not yet available, the San Diego district reports an apparent increase in recidivism following implementation of the new law. It appears that an order issued by an immigration inspector does not have the psychological force of an order issued by an Immigration Judge. What is gained in expediting by the new statutory process may be lost in increased recidivism.

To counter this trend, the San Diego district has instituted a three-strike system that corresponds with the changes mandated by the new law. This system was established with the cooperation of the INS, the Executive Office for Immigration Review [EOIR], and the U.S. Attorney's Office in response to reports of apparent recidivism among aliens turned away by the expedited removal process. The first strike occurs once the INS inspector issues an expedited removal order to the alien that carries a penalty of inadmissibility for up to twenty years in some cases and permanently if the offense involves the use of a fraudulent document.

The second strike—appearance before an Immigration Judge in Port Court—occurs once the alien is apprehended after having been removed for a previous immigration or criminal violation. This step provides a critical link to deterrence: personal communication of the consequences of violating an immigration law. At the hearing, the Immigration Judge advises the alien of the administrative sanction resulting from the attempted illegal reentry after expedited removal (i.e., a bar to admission for some period) and also of the certainty of felony prosecution if the alien attempts reentry during that period. The presence of an Immigration Judge is considered a vital component to the credibility of the San Diego district's border enforcement. The clear, unequivocal notice of the penalty aliens are likely to incur at the third step, coupled with the prospect of time spent in prison, is predicted to have more of a deterrent effect than simply turning aliens away without providing adequate notice of the consequences of their conduct.

The third strike involves felony prosecution by the U.S. Attorney's office under 8 U.S.C. § 1326(a) for illegal reentry following deportation, exclusion, or removal or under § 1326(b) for illegal reentry by certain criminal aliens who likewise have been previously removed. The penalties for a conviction under these sections of Title 8 range from sentences of not more than two years to not more than twenty years and/or a fine.

The INS and the Border Patrol are in the process of linking the IDENT system to all sectors along the southwest U.S.-Mexican border. This is especially important in light of the apparent shift in border movements to the east. Moreover, proper coordination of this system with various other law enforcement agencies to identify criminal aliens and other immigration violators may enhance the cooperation between those agencies and heighten enforcement along the border. For example, within the constraints of privacy limitations, data on criminal aliens entered into the IDENT system and furnished to the U.S. Attorney's Office would allow that office more readily to identify and prepare the criminal alien cases it intends to prosecute under the § 1326 provisions.

San Diego also is a laboratory for initiatives to facilitate legal entries while guarding against the abuses referenced above. The Commission urged in its 1994 report that port of entry operations be improved to reduce long waiting times for legal crossings. We learned in El Paso that some illegal crossers had legal authority to enter, but because of the long waits, chose to use unauthorized avenues to enter. San Diego, along with several northern border sites, has been experimenting with a Dedicated Commuter Lane [DCL] to speed legitimate border traffic. This concept combines upfront screening of the applicant for a commuter pass and use of technology to ensure that the crosser is indeed the person who previously was screened. Another innovation in San Diego is a new working relationship between INS inspections and the Customs Service to open all traffic lanes and to improve the division of responsibility: INS currently runs the port for pedestrian crossing and Customs for cargo inspections. Responsibility for inspections at the vehicle lanes still is shared by INS and Customs.

Reducing visa overstay and abuse. Visa overstay and abuse of visas and Border Crossing Cards [BCCs], particularly through unauthorized work, continue to challenge effective border management. Most of those entering with visas and BCCs come for legitimate purposes, abide by the terms of their entry, and leave when required. Out of the millions of aliens who are inspected each year, only a very small proportion (about 150,000 per year) overstay for significant periods. Any efforts to reduce abuse must also consider the widespread benefits that accrue from most visa and BCC holders. A number of policy changes could help ease legal entry while reducing abuse. The Commission previously recommended, and Congress and the Administration have taken action for, the development of new entry-exit controls for persons entering with visas, reissuance of Border Crossing Cards to give them greater integrity, and providing significant new resources for inspections.

Monitoring and evaluating new initiatives. The various intended and unintended consequences of the new resources, policies, and initiatives in and between ports of entry make clear the need for careful monitoring. The Commission reiterates its 1994 recommendation that a systematic assessment of the effectiveness of new border strategies be undertaken by internal and external evaluators. IIRIRA mandates a General Accounting Office five-year evaluation of border management. This study should be underwritten with sufficient resources and expertise to ensure that Congress and the Executive Branch gain an independent view of the new policies' effectiveness.

- **Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful immigration.** Economic opportunity and the prospect of employment remain the most important draw for illegal migration to this country. Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards. The Commission continues to believe the following areas of worksite regulation and enforcement require improvement:

Employment authorization verification system. In our 1994 report, the Commission concluded that the single most important step that could be taken to reduce unlawful migration was development of a more effective system for verifying work authorization.

A large majority of employers will comply with the law, and they will not knowingly hire illegal aliens. However, the widespread availability of fraudulent documents makes it easy for illegal aliens to obtain jobs because employers generally have no way of determining if the workers are authorized or not. The minority of employers who knowingly hire illegal aliens, often to exploit their labor, find protection from sanctions by going through the motions of compliance while accepting counterfeit documents. The absence of a secure verification process also heightens the potential for discrimination against legally-authorized, foreign-looking or -sounding workers because employers fear that they may be inadvertently hiring illegal aliens.

The Commission concluded that the most promising option for verifying work authorization is a computerized registry based on the social security number; it unanimously recommended that such a system be tested not only for its effectiveness in deterring the employment of illegal aliens, but also for its protections against discrimination and infringements on civil liberties and privacy.[14] The Commission urged the Administration "to initiate and evaluate pilot programs using the proposed, social security-based computerized verification system in at least five states with the highest levels of illegal immigration . . ." In the interim, we recommended that INS should continue to implement pilot programs already underway that permit employers to verify the work authorization of these newly-hired workers who attest to being aliens. The existing pilot, since expanded, was a good mechanism through which INS could develop the data and other systems that would be needed in the more extensive pilots envisioned by the Commission. They continued to have a fatal flaw, however, in that an illegal alien could attest to being a U.S. citizen and thereby escape verification by INS.

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[14] The Concurring Statement of Commissioners Leiden and Merced can be found in the Commission's 1994 report.

The Commission's recommendation for a verification pilot that involved both citizens and aliens was incorporated in modified form in IIRIRA.[15] Congress mandated that the Attorney General establish a pilot confirmation system using a telephone line or other electronic media. The Commissioner of Social Security was mandated to establish a reliable, secure method to verify the social security number provided by a new hire as part of the employment confirmation process. Pilot programs testing the new confirmation process were to be implemented in, at a minimum, five of the seven states with the highest estimated illegal alien population. Participation in the pilot programs is to be voluntary for most employers. The legislation mandated participation by federal agencies and the Congress. Companies violating employer sanctions provisions can also be required to participate. The Attorney General is to report on the pilot programs after three and four years of operation.

The first of these pilot projects was to begin not later than one year from enactment of IIRIRA, or about August 1997. The first pilot project, starting in Chicago, began in late August. Called the "Joint Employment Verification Project" [JEVP], the pilot involves INS and the Social Security

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[15] IIRIRA, Title IV—Enforcement of Restrictions Against Employment, Subtitle A: Pilot Programs for Employment Eligibility Confirmation, sections 401-405.

Administration. The verification pilot will test many of the requirements of the "Basic Pilot Program" mandated in § 403(a) of IIRIRA.

The JEVP will have prospective new employees fill out the current INS Form I-9, submit identification documents listed in the legislation, and include a photograph. Employers will then contact the Social Security Administration [SSA] through a touch-tone telephone (being developed under a contract with ATT) that will electronically verify identity and authorization/nonauthorization to work using the employee's social security number. If either of these is not confirmed, the prospective employee must be notified. The employee may then withdraw or contest this tentative nonconfirmation. In this case, the prospective employee has ten days in which to provide additional or corrected information to the employer. If this still does not produce confirmation of employment authorization, the employee will be told to contact SSA [for citizens] or INS [for noncitizens] to correct their record(s) and/or their status. During this confirmation process, employees cannot be terminated. If still unconfirmed at the end of the process, the employee then may be terminated. As mandated by IIRIRA, INS plans to expand implementation of the JEVP into five additional states by the end of September 1997.

In addition, IIRIRA mandates two other pilot projects, a "citizen attestation pilot project" and a "machine readable document pilot project." INS currently is formulating these additional pilot projects. The "citizen attestation pilot project" will be similar to the INS' current Employment Verification Program, while the "machine readable document pilot project" is a variation of the JEVP and the "Basic Pilot Project."

The current pilot programs are a useful step in improving verification, but they do not fully solve the problems we have identified. The Commission reiterates its support for pilot-testing approaches that do not require employers to use the current I-9 procedure. The I-9 is flawed in several ways. First it is a document system, which is prone to counterfeiting. Second, it requires employees to specify if they are citizens or aliens. This latter requirement increases the potential for discrimination based on alienage or presumed alienage. Third, it presents an added paperwork burden for employers who must keep the I-9 file. The current pilot programs help address the first problem by providing for telephone or computer verification of information provided in the I-9. It does not address the second or third problems, however.

A system based on verification of an employee's social security number, with a match to records on work authorization for aliens, eliminates any determinations by the employer and can be implemented electronically, thus eliminating the need for work authorization documents. The Commission recognizes that the data systems are not yet in place for this preferred process to work. The federal government does not have the capacity to match social security numbers with INS work authorization data without some of the information captured on the I-9. Congress should provide sufficient time, resources, and authorities to permit development of this capability.

The Commission urges the Administration and Congress to monitor closely and evaluate the effects of these various pilot programs. As discussed in our earlier report, the evaluation should assess their effects in reducing fraud, reducing the potential for discrimination, reducing emplyers' time, resources, and amount of paperwork, and protecting privacy and civil liberties. The evaluation should be carried out by nationally-respected outside evaluators. It should be conceived as a continuing evaluation whose results are used in modifying and improving the pilots as they are implemented.

Counterfeit documents. The Commission recommended action to reduce the availability of counterfeit documents and the fraudulent access to so-called "breeder documents," particularly birth certificates used to establish identity. The Commission is pleased to note progress in the development of new and more tamper-proof basic documents that could serve as verification documents until a general, nationwide verification system is fully in place. The Commission also believes that the federal government should develop a package of incentives and disincentives to encourage states and other localities to develop standards for issuing birth and death certificates and drivers' licenses. The Commission is pleased to note that its 1994 recommendation for imposing additional penalties on those producing and selling counterfeit documents was adopted in the IIRIRA.

Antidiscrimination strategies. In its 1994 report, the Commission expressed its concern regarding the discrimination that occurs against citizens and noncitizens as a result of the current employer sanctions system. To address this issue, the Commission recommended development of a new verification process to deter immigration-related discrimination. We also urged more proactive strategies to identify and combat immigration-related discrimination at the workplace, as well as a new study to document the nature and extent of the problem. Revisiting this issue three years later, the Commission finds that there have been a number of changes that are relevant to the Commission's recommendations.

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First, the Office of Special Counsel [OSC] for unfair immigration-related employment practices, formerly housed as an independent agency within the Department of Justice, has been incorporated into the DOJ's Civil Rights Division. This organizational change seems to have been well received within the Department as both the Division and OSC focus on protecting the rights of immigrants and racial and ethnic minorities.

The number of OSC staff, however, has decreased from thirty-six to about twenty-five since FY 1994. This downward trend harms OSC's ability to take the proactive role that the Commission recommended (e.g. increasing independent, targeted investigations and beginning testing programs). The Commission urges attention to this matter, as well as to the long delay in confirming a Special Counsel to head the office.

A significant portion of OSC's efforts have been directed toward the education of employees and employers, and we support these efforts. OSC has awarded 114 grants totaling $2.09 million since FY 1990 and contracted out for a five-year national public affairs/communications strategy. Its attorneys and staff have made 1,000 presentations in the last ten years, and its grantees have averaged 1,700 presentations per year. OSC also has coordinated its educational efforts with the Equal Employment Opportunity Commission, INS, and DOL and has Memoranda of Understanding with these and other agencies.

Despite this apparent coordination, however, OSC has not been involved in designing and monitoring the verification pilot programs. Reducing immigration-related employment discrimination against foreign-looking or -sounding persons was a key goal of the Commission's proposed verification system. OSC should play a role in monitoring the verification pilots to see if the discrimination is indeed reduced as predicted.

The Commission also reiterates its recommendation for a methodologically-sound study to document the nature and extent of unfair immigration-related employment practices that have occurred since the General Accounting Office's 1990 report. Only through such a study can it be determined whether employer sanctions-related discrimination has increased or decreased and how the pilot programs compare with the current situation on this indicator.

In 1996, IIRIRA changed the INA by requiring that an intent to discriminate must be proven for an employer to be found guilty of violating IRCA's antidiscrimination procedures with respect to document requests. Some believe that the intent standard will be a difficult one to prove and that it provides the employer with a loophole. The actual effect of this provision will be known only as OSC implements the statutory change and should be monitored.

Labor standards enforcement. Protecting authorized workers from employment abuses and substandard conditions and practices remains an essential ingredient of a strategy to combat illegal migration. Employers who hire illegal aliens tend to violate other labor standards and *vice versa*. Recently uncovered examples of exploitation of illegal aliens, including indentured servitude, highlight the necessity of enhanced labor standards enforcement. The Commission recommended in our 1994 report the allocation of increased staff and resources to the Department of Labor for the enforcement of wage and hour and other labor standards. We continue to believe that these additional resources are necessary, and the

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Commission continues to urge Congress to authorize and fund additional labor standards investigators whose work should target industries hiring significant numbers of illegal aliens. As described more fully later in this report, we believe that the Department of Labor should have full capacity and authority to sanction employers who fail to verify work authorization as part of the agency's duties in enforcing labor standards.

- **Restricting eligibility of illegal aliens for publicly-funded services or assistance except those made available on an emergency basis or for similar compelling reasons to protect public health and safety or to conform to constitutional requirements.** Although public benefit programs do not appear to be a major magnet for illegal migrants, it is important that U.S. benefit eligibility policies send the same message as immigration policy: Illegal aliens should not be here and, therefore, should not receive public assistance except in unusual circumstances. The Commission recommended drawing a line between illegal aliens and lawfully-resident immigrants with regard to benefits eligibility, in part to reinforce this message. Immigrants are welcome in the country and, therefore, should be eligible for our basic safety nets; illegal aliens are not welcome and should not receive our assistance. We continue to believe that this demarcation between legal and illegal aliens makes sense. The Commission urges the Congress to reconsider the changes in welfare policy enacted in 1996 that blur the distinctions between legal and illegal aliens by treating them similarly for the purposes of many public benefit programs.

- **Strategies for addressing the causes of unlawful migration in source countries.** An effective strategy to curb unauthorized movements includes cooperative efforts with source countries to address the push factors that cause people to seek new lives in the United States. The Commission continues to urge the United States government to give priority in its foreign policy and international economic policy to long-term reduction in the causes of unauthorized migration. The United States can take many unilateral steps to improve its immigration policies, but U.S. policies alone will not stop unauthorized migration.

Recognizing the complex motivations behind unlawful movements, the Commission advocated the following possible interventions, many of which have indeed occurred. They include: arrangements to facilitate trade and investment in sending countries; support for human rights and democracy building; peacekeeping operations; humanitarian assistance in countries of origin and first asylum; deployment of human rights monitors; human rights training for government officials in potential sending countries; humane treatment of citizens and minorities; and reconstruction programs after civil wars and civil conflicts. In its 1997 report on refugee policy, the Commission recommended that the U.S. government continue demonstrating leadership in international responses to refugee and related humanitarian crises, including concerted diplomatic and other efforts to prevent the emergencies from occurring.

To focus greater attention on the causes of migration, the Commission recommends development of immigration impact analyses of foreign policy and trade decisions with potential migrant sending countries. The Commission also calls for adoption of focused strategies for communities producing large numbers of U.S.-bound migrants and strengthened intelligence gathering to improve early warning of large unauthorized movements.

Other efforts to reduce the pressures of migration from the sending countries would be helpful, such as programs to arrest environmental damage throughout the hemisphere, to restore the environment in such areas as Haiti and Mexico, to improve rural development and agricultural productivity, particularly in those areas where land is becoming marginalized and unlikely to sustain the local population without an intervention strategy, and to address other environmental problems such as clearing land mines in rural Central America.

Given its proximity to the United States and its number of migrants, the Commission believes increased coordination with Mexico is essential to address problems related to migration. The Commission notes with satisfaction the efforts being conducted jointly by the government of Mexico and the United States to improve coordination strategies and actions on their respective sides of the border and encourages the continuation of such important dialogues. In particular, the Commission recognizes the work of the Binational Study on Migration Between Mexico and the United States, the Working Group on Migration and Consular Affairs, the various cross-border liaison groups established along the border, and efforts between the two countries to coordinate antismuggling efforts, regulate the movements of people across land borders, deter third-country nationals transiting Mexico *en route* to the U.S., curtail auto theft and train cargo theft, reduce border violence, and enhance cross-border law enforcement cooperation.

The Commission also notes that action has taken place at the regional level; annual discussions have been convened involving the U.S., Mexico, and Central American countries. Further, the U.S. has held direct discussions with other countries in the region, such as Cuba, with whom it signed an agreement to curb unauthorized migration of its native population.

Despite that program, the need remains for forward looking consultative mechanisms between the U.S. and other countries. These should focus on exploring future policies and their migration implications as well as developing various policy scenarios and options for addressing unauthorized migration. Joint data collection and analysis also would be useful in resolving some of the disagreements surrounding migration, for example joint solutions to address the economic and social costs of the migration.

- **Mechanisms to respond in a timely, effective, and humane manner to migration emergencies.** A credible immigration policy requires the ability to respond effectively and humanely to migration emergencies in which large numbers of people seek entry into the United States. These emergencies generally include *bona fide* refugees, other individuals in need of protection, and persons seeking a better economic life in the U.S. Failure to act appropriately and in a timely manner to determine who should be admitted and who should be returned can have profound humanitarian consequences. Further, an uncontrolled emergency can overwhelm resources and create serious problems that far outlast the emergency.[16]

  Leadership. Past experiences demonstrate that leadership and a chain of command must be established quickly during an unfolding mass migration emergency to ensure an effective response. The proposed National Security Council focal point for refugee issues should assume these responsibilities because of the political nature of the decisions, the need for high Executive Branch access, and the need for credibility that derives from sufficient authority and government experience.

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[16] For a fuller discussion of the Commission's recommendation on mass migration emergencies, see *U.S. Refugee Policy: Taking Leadership*, 1997.

Regional advance preparation. Mass migrations are likely to continue within this hemisphere. To respond effectively and humanely to future crises, the U.S. and its regional partners need a plan for a regional temporary protection system. This plan should identify sites, prepare protection guidelines and processing procedures at the primary protection sites and other locations, and create a funding proposal that clarifies financial responsibilities and accounts for marginal additional costs. It also should include measures to avert and resolve crises and develop plans for implementing durable solutions.

Domestic advance preparation. The U.S. must also finalize its own federal contingency planning for migration emergencies that has been under development during the past decade (with review and revision as needed). The presence of a such a contingency plan identifying various scenarios, policy responses, and appropriate steps for implementing them can help avoid both dangerous and costly *ad hoc* decisionmaking and disruption of normal operations. An effective and viable emergency response, however, requires that the agencies have sufficient resources and authorities to carry out their responsibilities. Thus, as part of this process, the U.S. must develop a realistic financing strategy and mechanisms to trigger allocation of funds.

Increased coordination among federal agencies involved in emergency responses—as well as with state and local agencies—also is necessary to ensure that the appropriate participants are identified and involved in the discussions and that as many decisions and responsibilities as possible are agreed upon prior to emergency situations. This would facilitate emergency responses by reducing the reluctance of state and local government to be involved, by clarifying lines of authority, and by increasing trust between the parties. If they had the statutory authority to allow them to respond rapidly and efficiently, agencies with operational responsibility for mass migration emergencies could be more effective. This operational responsibility must include the authority to assign tasks to other agencies as needed.

Removals

A credible immigration system requires the effective and timely removal of aliens determined through constitutionally-sound procedures to have no right to remain in the United States. As the Commission stated in its 1994 Report, if unlawful aliens believe that they can remain indefinitely once they are within our national borders, there will be increased incentives to try to enter or remain illegally.

Our current removal system does not work. Hundreds of thousands of aliens with final removal orders remain in the U.S. The system's ineffectiveness results from a fragmented, uncoordinated approach, rather than flawed legal procedures. The Executive Branch does not have the capacity, resources, or strategy to detain aliens likely to abscond, to monitor the whereabouts of released aliens, or to remove them.

A large number of aliens—more than 250,000 in the past eight years—have been issued removal orders but have never been removed.[17] [See chart: Comparison of Removal Orders and Actual Removals.] In studying how the current system produces such a large number of

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[17] Prior to IIRIRA, such orders were referred to as "deportation" and "exclusion" orders.

Comparison of Removal Orders and Actual Removals

YEAR	1989	1990	1991	1992	1993	1994	1995	1996	1997 (1st half)
ORDERS	48,000	52,000	60,000	65,000	70,000	84,000	105,000	131,000	64,000
REMOVALS	34,000	30,000	33,000	43,000	43,000	45,000	51,000	69,000	42,000
UNEXECUTED ORDERS	14,000	22,000	27,000	22,000	27,000	39,000	54,000	62,000	22,000
CRIMINAL REMOVALS	8,000	12,000	17,000	24,000	28,000	31,000	33,000	37,000	23,000
NONCRIMINAL ALIEN REMOVALS	26,000	18,000	16,000	19,000	15,000	14,000	18,000	32,000	19,000
INS DISTRICT IN SAN DIEGO REMOVALS	—	7,000	8,000	8,000	8,000	9,000	12,000	23,000	13,000

Sources: INS, EOIR, Administratively Final Removal Order by Month: Summary, July 24, 1997 unexecuted final removal orders, the Commission finds that the removal process is neither conceived of nor managed as an integrated system.

The Commission urges immediate reforms to improve management of the removal system and to ensure that aliens with final orders of deportation, exclusion, or removal are indeed removed from the United States.

The Commission urges immediate reforms to improve management of the removal system and to ensure that aliens with final orders of deportation, exclusion, or removal are indeed removed from the United States.

In its 1994 report, the Commission recommended that the top enforcement priority should be the removal of criminal aliens from the U.S. in such a way that their potential return to the U.S. will be minimized. The INS has made considerable progress recently in removing larger numbers of criminal aliens. This year, INS is on track to remove 70 percent more criminal aliens than were removed in FY 1993. Despite these advances, the actual number of criminal alien removals still lags behind the total number who should be deported from this country.[18]

INS has been able to increase the number of criminal alien removals by detaining previously incarcerated aliens after they complete serving their sentences, through conclusion of their proceedings, and removal can be effected. More significantly, INS and the Executive Office for Immigration Review developed the Institutional Hearing Program [IHP] through which removal hearings are held in the prisons. When final orders are issued in this setting, criminal aliens can be deported directly from state or federal prisons, alleviating INS' need to detain them during deportation proceedings. The Commission recommended enhanced use of the IHP in its 1994 report. As the recent GAO testimony cited above indicates, improvements are still needed to ensure that INS identifies and deports all removable criminal aliens.

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[18] See, e.g., GAO Testimony, "Criminal Aliens: INS' Efforts to Identify and Remove Imprisoned Aliens Need to Be Improved," before the Immigration and Claims Subcommittee, Committee on the Judiciary, House of Representatives, July 15, 1997.

Further, while the INS has increased criminal alien removals over the last several years, noncriminal alien removals remained static until 1996, as the chart comparing removal orders and actual orders indicates. The recent increase in noncriminal removals may be somewhat related to increased detention space and resources authorized by Congress. However, much of the increase appears localized, suggesting that other forces are at work. As the chart further shows, removals from the San Diego District represent much of the increase and are related directly to the establishment of a Port Court in 1995.[19]

Even with these increased removals, the system needs significant improvements before it can be regarded as credible, that is able to deport most of the aliens with final orders of removal. To achieve this goal will require a new approach to correct a fundamental flaw—the fragmentation in the current conception and management of the removal system. Each part of the system—Investigations, Trial Attorneys, and Detention and Deportation—acts independently, impeding the total system's efficiency and leaving no one accountable for growing numbers of unexecuted final orders of removal.

The system starts with INS investigations of potential immigration law violations. When investigators find such violations, they issue notices placing aliens in removal proceedings. At that point, the investigators are finished with their assigned tasks; they are never connected to the results of their work—whether the alien was ultimately ordered removed and actually deported. Nor is their performance evaluated in connection with actual removals or with the priority that policymakers place on the removal of particular categories of aliens. Investigators do not, as a matter of practice, distinguish among priorities when initiating the formal removal process; both the worst violators and those who may have good claims for relief are placed in the same costly and time-consuming proceedings.

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[19] When "Operation Gatekeeper" changed the patterns of how aliens attempted to enter the U.S. illegally and resulted in a significant increase in the number of aliens trying to cross with false documents at the port of entry, the U.S. Attorney worked with INS and EOIR to establish a more expeditious removal process for aliens apprehended at ports of entry. Previously, such aliens were simply turned back to Mexico; under the new system, they were placed in exclusion proceedings at the newly created Port Court. The aliens were detained for a few days, and the exclusion proceedings were expeditious because they were uncontested.

Once the proceedings have commenced, the INS Trial Attorney is responsible for the case. The volume of cases for each Trial Attorney is very large; yet, again there is no considered prioritization about which cases to proceed against and which not. Key policymakers do not provide guidance to Trial Attorneys about prioritizing cases, and, even if such guidance were provided, Trial Attorneys say that they are not given sufficient time to review cases to determine whether a case is worth pursuing. Again, there is no connection to the ultimate aim of the system—removing those who should be deported.

The system suffers further because many aliens are unrepresented and thus do not receive advice on whether to go forward because they have a chance of being granted relief. As the Commission learned in studying the results of the Florence Representation Project [see below], the removal process works much more efficiently when aliens receive advice of counsel. Those with weak cases generally do not pursue relief through proceedings if they understand from counsel that they will be wasting their time. As the late Chief Immigration Judge Robie pointed out, representation generally makes the court system work more efficiently. For example, Immigration Judges often grant continuances to unrepresented aliens to give them time to obtain counsel. In certain types of cases (particularly asylum claims), some judges are hesitant to proceed in the absence of representation.

When a final order of removal is issued, another INS office, Detention and Deportation, takes responsibility for the case. This office is charged with managing detention space and effecting removal. The reality is that there will never be enough space to detain everyone who should be removed. Nonetheless, no plan has been devised to pursue alternatives. The only experiment the INS has launched is the Vera Appearance Assistance Program that plans to test the utility of supervised release on various limited populations [as discussed below]. Unfortunately, due to internal INS problems, that pilot may not gain access to one of the main groups it should test—asylum seekers who meet the credible fear standard. No strategy has been devised for determining when, after the first hearing on the merits, detention is advisable because the likelihood of absconding is higher. Notices ordering removable aliens to report for deportation, known as "run" letters, continue to be issued at a 90+ percent no-show rate. No strategy has been developed for picking up aliens with final orders even when there is a recent address.

Establishing a more effective removal system requires changes in the management of the removal process. More specifically, the Commission recommends:

- **Establishing priorities and numerical targets for the removal of criminal *and* noncriminal aliens.** The Commission encourages headquarters, regional, and local immigration enforcement officials to set these priorities and numerical goals. Based on the above analysis of removal orders and actual removals, it appears that beyond the very highest removal priority—convicted criminals—targeted priorities of particular categories generally have not been developed at the national and local levels. Nor has INS developed numerical targets for the removal of specific categories of noncriminal aliens. This absence of prioritization and performance measures generally precludes serious consideration of what strategies, resources, and training will be needed to effect the desired removals.

Establishing removal of criminal aliens as a priority and setting numerical targets helped identify such new strategies as the IHP. The same process can work with regard to other categories of aliens, as can be seen in San Diego. Aliens who attempted to enter there with fraudulent documents were singled out as a priority for removal with an exclusion order. Formerly, those presenting fraudulent documents were permitted simply to withdraw their application for admission with no penalty. Setting the priority to remove aliens attempting reentry led to the decision to increase Inspection staff, establish a Port Court, identify additional detention space, and gain a commitment from the U.S. Attorney to prosecute those who attempted reentry after exclusion.

Failed asylum seekers [as the Commission recommended in our June 1997 Refugee Report], visa overstayers, unauthorized workers in targeted industries, and those who use false documents are categories that require attention if our removal system is to become credible and deter abuse. Setting priorities and numerical targets will help the government manage what is potentially a huge caseload of removable aliens.

- **Local oversight and accountability for the development and implementation of plans to coordinate apprehensions, detention, hearings, removal, and the prevention of reentry.** With guidance on priorities, local managers in charge of the removal system would be responsible for allocation of resources to ensure that aliens in the prioritized categories are placed in the process and ultimately removed. Local managers also would be responsible and accountable for identifying effective deterrents to reduce the likelihood that removed aliens would attempt to reenter the U.S.

Managers need to redesign the system so that resources are balanced from beginning to end. Right now, the system is lopsided and disconnected. The front end (Investigations) drives the system, and the back end (actual removals) is neglected. That imbalance can be corrected if the local offices develop plans to coordinate apprehensions, detention, hearings, and the removal process in ways that target the particular priorities in different districts. As discussed above, the San Diego district has had some success in focusing on aliens trying to enter with false documents. After identifying this priority, the U.S. Attorney coordinated the key federal government actors to ensure that these aliens were placed into proceedings, either returned to Mexico or detained for several days awaiting the hearing, promptly removed after the issuance of a final order, and prosecuted if they reentered.

As discussed above, the local INS Trial Attorneys, who are part of the General Counsel's Office, currently do not play a significant role in driving the removal system. The Commission believes Trial Attorney offices should function in the same manner that U.S. and District Attorney Offices do. Those offices determine which cases they will prosecute; and these determinations guide detectives as to which cases they bring to the U.S. or District Attorney for prosecution. Congress should provide sufficient resources to support such initiatives. Based on the policy guidance and plans developed by headquarters, regional and local offices, the chief Trial Attorneys [now called District Counsel] should make it clear to investigators which cases they will pursue in proceedings and which cases they will not. Investigators should then target these priority cases. Local heads of Immigration Enforcement Offices should be held accountable for the planning and implementation of this reconceived removal system. To ensure such accountability, these local officials should have authority over both the prosecutorial and police functions.

- **Continued attention to improved means for identifying and removing criminal aliens with a final order of deportation.** The Commission reiterates the importance of removing criminal aliens as a top priority. Our recommendation regarding the importance of removing noncriminal aliens with final orders is not intended to shift the attention of the removal system away from this priority. Rather, both criminal and noncriminal aliens must be removed to protect public safety (in the case of criminals) and to send a deterrent message to *all* who have no permission to be here.

To improve the effectiveness of the criminal removal system, criminal aliens must be identified as early in the process as possible. The local jail pilot project mandated by § 329 of IIRIRA should be used to help determine how early in the criminal process identification should occur. The Department of Justice and the state and local criminal justice agencies should develop uniform means of identification, and the data systems of these agencies should be linked to identify more effectively criminal aliens who should be removed.

With respect to the Institutional Hearing Program, the GAO found that the INS (1) failed to identify many removable criminal aliens and initiate IHP proceedings for them before they were released from prison, and (2) did not complete the IHP by the time of prison release for the majority of criminal aliens it did identify. GAO recommended improved data systems to track the IHP status of each foreign-born inmate and the development of a workload analysis model to identify the IHP resources needed in any period to achieve overall program goals. The Commission believes that the development of uniform means of such identification and linked data also will help the program achieve its goals.

The Commission urges the Department of Justice to attend carefully to actual removals in two additional ways. First, we have heard serious complaints from foreign authorities that they are not being notified that the U.S. is returning a criminal alien. DOJ must develop an improved notification process so that appropriate authorities in the countries to which criminal aliens are being returned can plan for such returns and take these individuals into custody if necessary. Second, we also have learned that many criminal aliens are being returned unescorted. For public safety reasons, criminal aliens should be returned by escort.

- **Legal rights and representation.** The Executive Branch should be authorized to develop, provide, and fund programs and services to educate aliens about their legal rights and immigration proceedings. Such programs also should encourage and facilitate legal representation where to do so would be beneficial to the system and the administration of justice. Particular attention should be focused on aliens in detention where release or removal can be expedited through such representation. The alien would not have a right to appointed counsel, but the government could fund services to address some of the barriers to representation.

Under the provisions of § 292 of the Immigration and Nationality Act, an alien placed in proceedings is guaranteed the privilege of being represented by an attorney or other qualified legal representative, but at no expense to the government. Under this system, the alien is provided with a list of local attorneys and accredited organizations practicing immigration law who might be able to provide legal representation. Studies have shown that the vast majority of aliens in proceedings before Immigration Judges are not represented by counsel. This is accounted for by several factors including the lack of English proficiency on the part of aliens, a lack of understanding of the legal process and of their legal rights, the lack of funds to hire an attorney, and an inability to find someone available and willing to represent them. Securing the services of an attorney or otherwise qualified legal representative presents a particular challenge for detained aliens whose freedom is constrained, who have limited phone privileges, and who find themselves situated in locales not readily served by or accessible to the legal community.

Experience demonstrates that when aliens are represented in proceedings, cases move more efficiently, economically, and expeditiously through the system. Indeed, represented aliens with little or no chance of prevailing can be more readily weeded out of the system. Aliens who have legal representation are much more likely to appear at their hearings than unrepresented aliens. Fewer continuances are needed or granted in the case of represented aliens. Hearings take less time. Issues presented for decision by the immigration courts and on appeal are more readily narrowed. Applications for relief are better prepared and presented in immigration court. Appeals are more cogently presented and are supported by legal briefs. Simply put, when aliens in proceedings or on appeal have legal representation, the system works better.

The Commission visited the Florence Immigration and Refugee Rights Project in Florence, Arizona, a project that demonstrates the advantages of programs designed to educate aliens about their rights and that provides a triage system to

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secure representation for those with a likely avenue for relief. The Project screens detainees for eligibility for immigration benefits and relief from deportation, exclusion, or removal, informs aliens about their rights, and directly represents as many as it can handle, with the overflow referred out to *pro bono* attorneys. The Project has been recognized for its success and assistance in moving cases through the system while affording due process. An evaluation of the Project found that aliens with representation had a better opportunity to become aware of their rights and legal options. Many inside and out of government believe that the Florence Project reduces alien detention time, expedites removal by decreasing necessary immigration court time, and increases court efficiency. Representation also decreases anxiety and behavioral problems among detainees.

The Commission believes that programs like the Florence Project should be facilitated and encouraged. Moreover, the Commission believes that the Executive Branch should be granted the authority to develop, provide, and fund other programs and services that inform aliens about their rights and the proceedings in which they are placed and to otherwise facilitate legal representation where to do so is a benefit to the system. Under this approach, the alien would not have a right to appointed counsel, but the government could fund ancillary services, such as rights presentations, interpreters, transportation, attorney/client meeting places, and training to address some of the barriers to increased legal representation.

- **Prosecutorial discretion to determine whether to proceed with cases.** Guidelines on the use of prosecutorial discretion should be developed; local Trial Attorneys should be trained to exercise discretion and support staff should be provided to ensure that Trial Attorneys have the time needed to screen cases prior to hearings. Discretion should be exercised with the goal of establishing a more efficient and rational hearing system.

In addition to targeting priority cases, the District and U.S. Attorneys decide which of those cases to prosecute based on an assessment of the strength of each case. In contrast, by and large, the INS prosecutes all cases that appear to involve violations of law. The Commission is concerned about the cost of litigating every case, both in terms of the credibility of the system and expenditure of public funds. We have recommended setting priorities as a strategy to establish credibility and to send a deterrent message. Here we urge the development of a system based on a sensible goal: prosecution of those who actually will be removed.

To establish a removal system that operates efficiently by prosecuting appropriate cases and settling those, for example, where relief is likely to be established, guidelines should be developed and issued by the General Counsel. Trial Attorneys should be trained to create and apply these guidelines nationwide. Finally, Trial Attorneys need time to screen cases prior to a removal hearing and to determine whether the alien has a strong claim for relief. To free up their time, support staff should be provided to handle the clerical work that currently burdens the Trial Attorneys. By wisely applying their discretion, the Trial Attorneys could then focus their attention on immigration court cases that are likely to result in the removal of the alien upon completion of the proceedings. This "out-of-court" approach also would assist the Immigration Judges and the private immigration bar by reducing the amount of time all parties spend in immigration court.

- **Strategic use of detention and release decisions.** Detention space, always in limited supply, is in greater demand as the government has focused more on the removal of criminal aliens and as Congress mandates more categories to be detained. IIRIRA requires the Attorney General to detain all aliens found inadmissible or deportable on criminal or terrorist grounds. The criminal grounds include convictions for certain crimes now categorized as "aggravated felonies" for which a sentence of one year imprisonment or more may be imposed. Congress enacted these changes knowing that current detention space and personnel were insufficient to execute such expanded detention requirements and allowed the Attorney General to waive these requirements for two one-year periods while developing the capacity to handle these developments. The Attorney General notified the Judiciary Committees of the insufficiencies for the first year. IIRIRA also requires the detention of asylum seekers during the credible fear determination process.

  Detention needs to be used more strategically if the government is going to target and remove designated categories of aliens determined to be priorities in particular locales. If it appears that asylum abuse is getting out of hand in one locality, for example, detention space would be needed to ensure that failed asylum seekers are removed.

  Alternatives to detention should be developed so that detention space is used efficiently and effectively. In 1997, INS initiated a three-year pilot program, created with and implemented by the Vera Institute of Justice, that may help define effective alternatives to detention for specific populations. The Vera Assistance Appearance Program aims to develop and validate with formal research a supervision program that will increase both appearances at immigration court proceedings and compliance with the legal process among those not detained, while ensuring efficient use of detention space. The program thus aims to address important removal problems: The Executive Branch can detain only a fraction of individuals in removal proceedings; those who are not detained often do not appear in court and rarely comply with removal orders. The pilot will free up valuable detention space by keeping out of detention aliens who may eventually be granted relief. If the Vera pilot demonstrates the utility of supervised release, an assessment of chances for relief and community ties or supervision would assist the Department of Justice in determining more precisely when detention is needed in each case to ensure that aliens who ultimately receive no relief do not abscond. It is hoped that the pilot will provide insight into the use of reporting mechanisms as well as the role of community organizations who take responsibility for maintaining contact with and reminding those released of their responsibilities to the immigration court.

The Commission considers the Vera pilot of great importance to the development of an effective removal system. INS officials at headquarters and in the local offices should work together to see that this pilot serves as a valid test of detention alternatives. In particular, the pilot should be permitted access to those asylum seekers who meet the "credible fear" test for two reasons. First, detaining individuals who have met an initial threshold demonstrating their likelihood of obtaining asylum is not a good use of scarce detention resources. As the Commission stated in its Refugee Report, "credible fear" is an appropriate standard for determining who will be released from detention; it is not appropriate for determining who will gain access to an asylum hearing, except under exceptional circumstances.

Second, asylum seekers who have met the credible fear test will enable the pilot to test the utility of supervised release and make recommendations on the role of community ties and sponsors.

Additional alternatives should be developed to address local situations. For example, in border communities, aliens with pending cases could be permitted to return to Mexico and come to Port Court for their hearing in lieu of detention, as occurs in San Diego. The aliens in such proceedings are told the consequence of their failure to appear—that they will be found excludable in absentia and criminally prosecuted if they attempt to reenter.

- **Improved detention conditions and monitoring.** Over the past two decades, INS has taken on significant responsibilities in detaining aliens. INS detains a broad range of aliens of both genders, from criminals to asylum seekers. While short detention periods typically are contemplated for those awaiting removal hearings, the results often are otherwise. The INS has also become the long-term jailer for a significant number of removable aliens from Cuba, Vietnam, and other nations. INS currently operates nine Service Processing Centers and, like the U.S. Marshals, contracts bed space with many state and local jails. In recent years, Congress has increased significantly resources for detention space: total available beds per day totaled 8,600 in 1996; INS is close to reaching its goal of 12,000 by October 1997.

Serious problems have occurred, the most prominent in 1995 when the ESMOR Contract Facility in Elizabeth, New Jersey, was shut down following an incident in which detainees voiced complaints of physical abuse, stealing, and harassment by guards. INS' own investigation of the facility uncovered serious management problems. More regularly, complaints regarding local jails have included human rights abuses, overcrowding, poor nourishment, mixing of women and juveniles with men and of asylum seekers with criminals, and lack of access to health care, counsel, family, and recreation.

Detention cannot be used effectively unless and until the conditions of detention are humane and detainees are free from physical abuse and harassment by guards. We have no doubt that appropriate criteria for all facilities can be promulgated, based on sound governmental judgment and consultation with concerned nongovernmental organizations. But most importantly, a system to monitor facilities and publish findings on a regular basis must be developed. Inspections must occur more than once annually.

Further, the Commission recommends that the Department of Justice consider placing administrative responsibility for operating detention centers with the Bureau of Prisons or U.S. Marshals Service. An immigration enforcement agency should not be shouldered with such a significant responsibility that is not part of its mission or expertise.

- **Improved data systems.** The Commission recommends that data systems link apprehensions and removals. Current data systems are unable to link an apprehension to its final disposition (e.g., removal, adjustment of status). In addition, INS statistics relate to events, not individuals. This significantly limits the use of apprehension and removal data for analytical purposes. The Commission urges development of data systems that link apprehensions and removals and provide statistics on individuals. This would foster a better understanding of apprehension as a removal tool and provide better information on recidivism.

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- **The redesigned removal system should be managed initially by a Last-In-First-Out [LIFO] strategy to demonstrate the credibility of the system.** Once a coherent system is organized and appropriate resources are assigned to removing deportable aliens—not simply to put aliens through proceedings—removals should proceed in a Last-In-First-Out mode. In this way, the government can send a credible deterrent message to failed asylum seekers, visa overstayers, users of counterfeit documents, and unauthorized workers, that their presence in the United States will not be tolerated. The LIFO model has worked successfully in the affirmative asylum system, allowing the government to demonstrate control over the current caseload and to quickly establish priorities for dealing with the backlog for enforcement purposes. It can provide both the measure of success for the removal system as well as convey the proper deterrent message.

The Commission urges Congress to clarify that the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Antiterrorism and Effective Death Penalty Act of 1996 do not apply retroactively to cases pending when the new policies and procedures went into effect. As a matter of policy, the Commission believes that retroactive application of new immigration laws undermines the effectiveness and credibility of the immigration system. Applying newly-enacted laws or rules in an immigration proceeding that is pending results in inefficiency in the administration of the immigration laws. It also can raise troubling issues of fairness.

The Commission urges Congress to clarify that IIRIRA and AEDPA do not apply retroactively to cases pending when the new policies and procedures went into effect.

There is no uniform effective date for the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 in its entirety. Instead, and to the extent it has spoken on the matter, Congress has imposed several different effective dates depending on the provisions involved. Most of the new removal provisions became effective on April 1, 1997. The fact that a statutory provision takes effect upon enactment or upon a future date certain, does not resolve the issue of whether the provision applies to cases already pending. When new statutory provisions are applied to such categories of cases, it is generically considered a "retroactive" application of the law.[20]

Although retroactive application of new statutory requirements by Congress is legally permissible (subject to certain constitutional constraints), it does not constitute sound public policy. Ours is a system governed by the rule of law. In our view, retroactively changing the applicable rules once a legal proceeding has commenced not only is manifestly unfair, but also invites confusion, adds uncertainty, and fosters a lack of trust and confidence in the rule of law.

We are concerned as well that retroactively applying new statutory provisions results in inefficiency and simply does not make good sense given the current realities of administering the immigration laws. As fully discussed earlier in this report, hundreds of thousands of outstanding administratively final orders of deportation remained unexecuted long before the enactment of either IIRIRA or AEDPA. Clearly, the system has had little problem in establishing sufficient grounds for deportation and exclusion under prior law. Moreover, although relief from deportation and exclusion under prior law was available, the number of granted applications was proportionally very small compared to the number of aliens in proceedings. The problem, then, has not been in ordering the deportation or exclusion of immigration violators, or in granting relief in a relatively small percentage of cases. The problem has been in actually removing aliens who have been found to be deportable, excludable, or removable following the conclusion of their proceedings.

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[20] The analytical model for determining statutory retroactivity, set forth by the Supreme Court of the United States in *Langraf v. U.S.I. Film Products, Inc.*, 511 U.S. 244 (1994), is aptly encapsulated in the following excerpt from *Immigration Law and Procedure*, Gordon and Mailman, Chapter 61, Special Alert, SPA61-1, 2 (1997):

> [T]he first step is to determine whether Congress expressly defined the statute's proper reach. The language of the statute must be examined to determine whether it manifests an intent to apply to cases or conduct that arose before the law's enactment. For the statute to apply retroactively, there must be an "unambiguous directive" or an "express command" from Congress that it intended such application. In the absence of such an unambiguous directive, it must be determined whether the new statute "attaches new legal consequences to events completed before its enactment" or "would impair rights a party possessed when he acted, increase a party's liability for past conduct or impose new duties with respect to transactions already completed." If the statute has this effect, it should not apply retroactively.

As noted above, the system is not yet removing anything approaching 100 percent of the existing detained or nondetained criminal alien population for whom an administratively final order of deportation or exclusion already has been entered or who are otherwise deportable or excludable under prior law based on their criminal conduct. Moreover, the system has failed to remove significant numbers of noncriminal aliens against whom orders of deportation or exclusion have been outstanding for several years. Although retroactive application of the 1996 legislation will both significantly increase the numbers of removable aliens and decrease the numbers of aliens who might have otherwise qualified for existing relief, the system does not have the capacity actually to remove these added numbers of individuals. The resulting situation serves only to further erode the effectiveness and credibility of the immigration system as a whole.

ACHIEVING IMMIGRATION POLICY GOALS

INTRODUCTION

Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immigration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, however, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address long-standing problems. A recent General Accounting Office report documented improvements—including, for example, a more strategic approach to the formulation of immigration enforcement programs—but concluded that management problems remain. Further change is required if the overall U.S. immigration system is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

STRUCTURAL REFORM

The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement, enforcement of immigration-related employment standards, adjudication of immigration and naturalization applications, and appeals of administrative decisions.

The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement; enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and appeals of administrative decisions. The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.

Mission overload. Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure, and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses. While some argue that enforcement and benefits are complementary functions, we agree with the Commission for the Study of International Migration and Cooperative Economic Development [Asencio Commission, after its Chair] that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities. Combining responsibility for enforcement and benefits also blurs the distinction between illegal migration and legal admissions. As a matter of public policy, it is important to maintain a bright line between these two forms of entry. We believe the Asencio Commission was correct in contending that separating enforcement and benefits functions will lead to cost efficiencies, more effective enforcement, and improved service to the public.

Diffusion of responsibilities among agencies. Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. This fragmentation of responsibility is most clear in relationship to the adjudication of applications for admission as a legal permanent resident: responsibility for making decisions on skill-based immigrant and LDA applications is dispersed among the Department of Labor, the Department of Justice's Immigration and Naturalization Service and the Department of State. Responsibility for investigating employer compliance with immigration-related labor standards is shared by INS and DOL. Additionally, the United States Information Agency has responsibility for determining who will enter with a J visa, under which some exchange visitors work in this country. USIA also must sign off on requests for waivers of the two-year home residency required of some J visa holders before they can adjust their status to other nonimmigrant or immigrant categories.

A second area in which responsibility is diffused and activities are redundant is worksite enforcement. Both INS and DOL conduct investigations to determine if employers have violated the employment eligibility verification requirement. Sanctions may be imposed by INS against employers who knowingly hire unauthorized workers. The DOJ Office of Special Counsel has related responsibili-

Current U.S. Immigration System

AGENCY \ FUNCTION	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE				
Immigration & Naturalization Service	✓	✓	✓	✓
Executive Office for Immigration Review				✓
DEPARTMENT OF STATE				
Consular Affairs		✓		
Bureau for Population, Refugees & Migration		✓		
Board of Appellate Review*				✓
DEPARTMENT OF LABOR				
Employment Standards Administration			✓	
Employment Training Administration		✓		
Board of Alien Labor Certification Appeals				✓

*For a limited set of nationality- and citizenship-related matters.

ties in determining if employers are engaging in immigration-related unfair employment practices.

Fragmentation of responsibility leads to conflicting messages from the various agencies, unnecessary delays in adjudication, and, when more than one agency must adjudicate the same request, redundancies in actual implementation.

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Proposed U.S. Immigration System

FUNCTION / AGENCY	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE Bureau for Immigration Enforcement	✓			
DEPARTMENT OF STATE Undersecretary for Citizenship, Immigration, and Refugee Admissions		✓		
DEPARTMENT OF LABOR Employment Standards Administration			✓	
AGENCY FOR IMMIGRATION REVIEW				✓

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs or an independent agency along the lines of the Environmental Protection Agency. We believe a new department or independent agency is neither practical nor desirable, particularly in the context of current interest in streamlining government operations, not creating sizeable, new entities.

After examining the full range of options, the Commission concludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below,

Proposed Restructuring of the Immigration System

DEPARTMENT OF JUSTICE	DEPARTMENT OF STATE	DEPARTMENT OF LABOR	INDEPENDENT AGENCY
BUREAU FOR IMMIGRATION ENFORCEMENT	UNDERSECRETARY FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE ADMISSIONS	EMPLOYMENT STANDARDS ADMINISTRATION	AGENCY FOR IMMIGRATION REVIEW
Immigration enforcement at the border and in the interior of the United States	Adjudication of eligibility for immigration-related applications	Enforcement of immigration-related employment standards	Administrative review of all authorized immigration-related appeals

the Commission recommends a restructuring of the immigration's four principal operations as follows:[1]

1. *Immigration enforcement at the border and in the interior of the U.S in a new Bureau for Immigration Enforcement at the Department of Justice;*

2. *Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of a new Undersecretary for Citizenship, Immigration, and Refugee Admissions;*

3. *Enforcement of immigration-related employment standards in the Department of Labor; and*

4. *Appeals of administrative decisions, including exclusion, deportation, and removal hearings, in an independent agency, the Agency for Immigration Review.*

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions.

The Commission recommends a restructuring of the immigration system:
1. Immigration enforcement at the border and in the interior of the U.S at the Department of Justice;
2. Adjudication of eligibility for immigration-related applications in the Department of State;
3. Enforcement of immigration-related employment standards in the Department of Labor; and
4. Appeals of administrative decisions in an independent review agency.

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[1] See Appendix for Commissioner Leiden's concurring statement.

Bureau for Immigration Enforcement (DOJ)

The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement in the Department of Justice.

The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement in the Department of Justice. The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau for Immigration Enforcement would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing and evaluating all U.S. immigration enforcement activities both within the United States and overseas.

The new agency's responsibilities would include many functions currently performed by the INS: inspections and admissions at air, land, and sea ports of entry and at pre-inspection facilities overseas; border management and control between ports of entry; apprehension and prosecution and removal of illegal residents and workers; oversight of pre- and post-trial/hearing release; identification and prosecution of document fraud; identification, deterrence, and prosecution of alien smuggling gangs; and other domestic and overseas deterrence activities.

The Commission believes that the current U.S. immigration system structure diffuses and confuses potential for a more concerted focus on central functions and activities. Enforcement objectives sometimes conflict with service goals and *vice versa.* Often, both compete for limited operational resources and for the time and attention of those responsible for planning, administering, and managing these programs.

The Commission is particularly concerned that although the current removal system produces more than 100,000 final removal orders each year, the system does not have the corresponding capability to remove the individuals subject to those orders. The Commission believes that it is critical to the credibility of the removal sector of the enforcement system that the agency be held accountable for setting realistic numerical priorities and producing specific outcomes. Upper-level management must be responsible for effecting an integrated system such that the agency apprehends, detains, and proceeds against those aliens it prioritizes for removal, and ultimately removes all those being issued final orders of removal.

To establish such an integrated system, the Commission recommends that the new enforcement agency have a more traditional law enforcement model structure and that it focus on police activities, pre- and post-trial probation services, and prosecution. Agency personnel should be upgraded to receive pay and benefits commensurate with those provided to other Department of Justice law enforcement agents. At present INS personnel performing the same functions as FBI or Drug Enforcement Agency [DEA] personnel are often at a lower-pay grade.

The police function would be carried out by *uniformed services*, such as Inspectors and Border Patrol Agents, and *investigators* who would conduct investigations and collect intelligence at the border and in the interior to deter smuggling, facilitate removals, and accomplish other similar goals. The Commission suggests turning over most detention responsibility to the U.S. Marshals Service and/or the Bureau of Prisons.

As in other law enforcement operations, particularly those in which more people are put into proceedings than can either be accommodated in detention or actually removed, there is a need for *pre- and post-trial/hearing screening* and/or *supervised release* on probation or bond. In the immigration context, these could be available, for example, to asylum-seekers who are deemed by an Asylum Officer to have demonstrated a credible fear of persecution, to those who have accepted voluntary departure and posted bond, or to those unlikely (because of close family members or other strong community ties) to abscond pending completion of their hearings or sentences.

To ensure a high expectation of individuals actually being removed from the U.S. within a certain time, the Commission believes that Trial Attorneys should have greater discretion to set priorities for apprehension and prosecution and to determine which cases are pursued for removal proceedings.

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

Uniformed enforcement officers. The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement. The unit would be accountable for both the facilitation of legal traffic at the ports of entry and the enforcement against illegal entry. It also would be responsible for moving detainees from apprehension sites to detention facilities and to hearing sites, as well as for escort duty during removals. After appropriate training, most of the officers performing these various functions could be transferred interchangeably, and opportunity for job mobility would exist across lines not now possible. As stated above, grade level and pay should be upgraded as needed to be commensurate with the law enforcement activities the officers will perform.

Unlike the current practice in which the Border Patrol reports to Sector Chiefs and Inspectors report to District Directors, all uniformed officers within a particular geographic area would be under the authority of a single, integrated immigration enforcement manager.

Investigators. The Commission believes investigations will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final orders of removal.

Only some 2,900 employees, out of an INS staff of more than 25,000, work on these many investigative tasks. A similar number work in INS Detention and Deportation. Most of these Deportation Officers could—given additional on-the-job training and supervision—conduct investigations. Deportation Officers now deal almost exclusively with docket control and management paperwork that could be done by lower level support staff, freeing the Deportation Officers for field work.

INS Investigators primarily work the front end of the removals process: identifying and arresting those who are illegally residing or working in the U.S. Little attention is given to the removal process as a whole, for ensuring availability of adequate detention space, allocating ample Trial Attorney and Immigration Judge time, effecting transfer to airports, and achieving physical removal. The system is bogged down with increasing numbers of aliens who are apprehended, charged with an immigration violation, put into proceedings, released due to lack of detention space or other prerequisites for effective timely processing, never appear at their hearings, or are never deported after a final order of removal is issued. The failure of careful planning and integration of the process means many of those who are apprehended are never removed. According to some observers, the INS' compartmentalized program planning, budgeting, and implementation procedures blunt attempts to integrate these functions more fully into a seamless and effective process.

"Removal Officers" in the new Bureau for Immigration Enforcement, who would integrate the functions of Investigators and Deportation Officers in apprehensions and removals, would enable the immigration system to deliver better on its commitment to actually remove those who are issued final orders. Managers would then have the flexibility to shift resources among various investigations activities as needed to produce a smooth-flowing process that ensures timely removal. As dsicussed above, grade and pay should be commensurate with the often dangerous law enforcement duties performed by investigators.

Intelligence. The Bureau for Immigration Enforcement will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators. It would act as a liaison with other federal law enforcement agencies and share information and intelligence. The Intelligence division would be one of the smallest in the agency with an anticipated staff of about 100 employees.

Assets Forfeiture Unit. As with the other DOJ enforcement agencies, the Bureau would have an Assets Forfeiture Unit. Statutory authority for Assets Forfeiture activities is a useful addition to the range of strategies and sanctions available to the U.S. law enforcement community. Augmented authorities in the 1996 immigration legislation increased both its usefulness and the potential for misuse or abuse. In order to be aggressive in using these new authorities and equally aggressive and proactive in ensuring against misuse/abuse, DOJ agencies established assets forfeiture units under the general guidance of the DOJ Assets Forfeiture Unit. Each agency, including FBI, DEA, and INS, has its own unit. These units, usually highly-placed within the agency, are the focal points for agency-wide asset-related policy implementation, field staff training, and field operations monitoring. They assist the agency's field staff in case development, monitor use of assets forfeiture funds, and oversee use of these sanctions to guard against abuse.

Pre- and post-trial "Probation" Officers. "Probation" functions are not now performed consistently or effectively in the immigration system, but the Commission believes these functions are essential to more strategic use of detention space. District Directors and Immigration Judges determine the release (either on personal recognizance or on bond) of apprehended aliens from detention. Often, release relates more to lack of detention space than to the likelihood that aliens will appear at their proceedings or assessment of aliens' danger to the community. Some aliens are given the option to depart voluntarily, but there is little tracking of whether they actually leave the country. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

Pilot programs, such as the Vera Institute Appearance Assistance Program discussed above, could be expanded into more areas if successful. INS requested this three-year project in the New York area. It studies reporting requirements and the effectiveness of community sponsors in supervising the release of aliens who meet certain criteria regarding community ties, relief from removal, and public safety. The program aims to free up valuable detention space for aliens without legal remedies who are likely to abscond, while keeping those who might receive relief out of detention.

Trial Attorneys/Prosecutors. INS has nearly 800 staff involved in immigration-related legal proceedings, such as offering legal opinions and advice and representing the government's interests in proceedings before Immigration Judges and on appeal.

The Commission believes that the Trial Attorneys, who, in effect, are the Government's immigration prosecutors, should be vested with, *and should utilize*, an important tool possessed by their criminal counterparts: prosecutorial discretion. Under the current system, the Trial Attorneys do not as a practice use discretion in determining which cases to pursue. The INS does not sufficiently prioritize or target cases; instead it acts as if it had the means to prosecute each and every case effectively. Cases go forward, even when an alien will, or is likely to, prevail on an application for relief or when there is no realistic belief that the alien will ever be removed from the country. Discretion exercised at the beginning of the process and at every step would target the use of scarce resources better and contribute to a more effective and credible system. Central office leadership would be required to set appropriate priorities and provide guidance to the Trial Attorneys as to the proper use of discretion.

Greater sharing of information between the Trial Attorneys, aliens, and their counsels would facilitate smoother and more expeditious movement through the system and fewer Freedom of Information Act requests. Greater use of stipulations and pretrial conferences (with sanctions resulting when attorneys are not prepared), would narrow the disputed issues needing court resolution and time.

Field Offices. The new enforcement agency would implement its programs through a series of field offices structured to address comprehensively the immigration enforcement challenges of the particular locality As the location of these offices should be driven by enforcement priorities, they would likely be located in different places than current district offices. Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices.

The field office inspections officers at ports of entry would both facilitate the admission of legal limited duration admissions and immigrants and the identification of illegal entrants. Border Patrol stations along the border and at checkpoints along major interior transportation corridors would facilitate enforcement activities. Appropriate field offices also would investigate and prosecute cases and contribute to detection and destruction of smuggling rings.

Current INS Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices. Most existing district offices and suboffices could be incorporated into the new agency; they also could supervise and administer the Border Patrol. [Until the mid-1950s, Border Patrol units worked out of and reported to INS District Offices.] The INS overseas enforcement presence could be retained and expanded by the new enforcement agency.

Citizenship, Immigration, and Refugee Admissions (DOS)

The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities. At present, three separate agencies—the INS, the Department of State, and the Department of Labor—play broad roles adjudicating applications for legal immigration, limited duration admission, refugee admission, asylum, and/or citizenship. In addition, the Department of Health and Human Services plays an ancillary role in setting requirements regarding health standards for new arrivals, and the United States Information Agency has a major role in exchange visitor programs.

The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities.

The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, would result in faster and better determinations of these benefits. Consolidation of responsibility in one department would permit a reengineering of the adjudication process to make it more efficient and timely.

In considering which department should be responsible for adjudicating citizenship and immigration benefits, the Commission considered each agency's current role and overall mission. Immigration has been a stepchild in each of the major departments with current responsibilities. The Department of State's primary role is the conduct of foreign relations, and immigration issues have been subsumed within its consular functions of protection and welfare of American citizens abroad. The Department of Justice tends to view immigration as an enforcement matter, and it is not well suited to oversee an agency that also adjudicates applications for benefits. The Department of Labor is concerned primarily with the labor market impact of immigration. The Department of Health and Human Services plays an important role in setting and implementing domestic refugee policy, but it has a very narrow, largely health-related involvement in overall immigration policy.

Recognizing the drawbacks inherent in choosing any of these locations, the Commission nevertheless concluded that the Department of State has the greatest capacity to undertake the additional work entailed in a consolidated system.

Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the

Department of State. The Department of State, however, already has a domestic presence and an adjudicatory capability. It issues one-half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost six million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities. In addition, the National Visa Center in New Hampshire processes and forwards to overseas posts three-quarters of a million immigrant cases.

Consolidating responsibility requires some changes in the way the Department of State administers its immigration responsibilities, which we believe would strengthen the adjudication function. This increase in domestic responsibilities may raise concern over possible decrease in attention and focus on the Department of State's traditional mandate in foreign affairs, as well as more practical caution regarding the well-known difficulties in managing the domestic aspects of immigration. Some observers also may be concerned that DOS might not give sufficient consideration to the domestic impact of immigration. To counter this perception (and some underlying reality), the Department of State would need to develop mechanisms for consultation with domestic groups representing a broad range of views and interests regarding immigration.

The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and LDA applications may be appealed, but no appeal is available on consular decisions. The Commission believes that immigrant and certain limited duration admission visas with a U.S. petitioner should be subject to independent administrative review [see below].

The Department of State also would have to prepare its own bureaucracy to take on these new functions. A need for a renewed emphasis on training for the management of large and interrelated offices and processes will be matched by the need for superior personnel management and leadership. These highly-regarded management skills would be an ideal attraction for those Foreign Service officers who shy away from consular assignments abroad, perceiving them as unwanted digressions from the classic diplomatic career path.

The new organization would be responsible for naturalization and determination of citizenship, adjudication of all immigrant and limited duration admission petitions, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Overseas citizenship services would continue to be provided by consular officers abroad and in Washington. Policy and program development for all immigration activities would be incorporated into the new organization, which also would have enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

With consolidation, the Department of State would have sole responsibility for processing immigrants—from the filing of the petition in the United States and subsequent visa issuance abroad, to the production of the green card and work authorization in the U.S., and ultimately, to naturalization. Issuance of a passport to the newly-naturalized citizen would complete this almost seamless process of immigration benefits adjudications. Consolidation of these steps would permit greater operational flexibility (e.g., one-stop adjudication of petitions and forwarding to posts abroad, streamlined processing for work-related visas), greater flexibility in use of personnel (e.g., the examination function could span visa petitions and passports), and, as discussed below, greatly enhanced antifraud capabilities.

The consolidation of these functions in DOS would, of course, be a major undertaking for a relatively small department already charged with absorbing the United States Information Agency and the Arms Control and Disarmament Agency. The Department of State must be given the resources to fulfill such new responsibilities. The approximately five thousand INS and Department of Labor staff currently involved in immigration applications adjudications would likely be transferred to DOS. Many employees would remain in or near their present locations and their functions would not appreciably change.

This recommendation envisions creation of an Undersecretary who would have direct access to the Secretary of State and who would be responsible for domestic and overseas immigration, citizenship, and refugee functions.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

A Bureau of Immigration Affairs [IA] would focus on the immigration process, as noted above, as well as on LDA processing. IA's expanded responsibilities would be based on those currently assigned to the Visa Office and the National Visa Center. In addition to its existing overseas work, the Bureau of Immigration Affairs would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Bureau of Immigration Affairs also would staff immigration information and adjudication offices in areas with immigrant concentrations. Related INS legal and regulatory staffs in Washington also would transfer to the IA Bureau, as would DOL functions regarding employment-based entry. In short, the IA Bureau would assess—in the U.S. and abroad—applications for all immigration-related benefits now performed by INS, DOL, DOS, and USIA.

Importantly, the employment verification system outlined in previous Commission recommendations also would be under the Department of State's control, although it would likely contract out the actual operation of that system. Another important part of its domestic presence would be the staffing of immigration information offices in areas of major immigrant concentrations.

A Bureau of Refugee Admissions and Asylum Affairs would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for overseas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor.[2] This would integrate the key governmental players in one of our most important and historic international activities. In this vein, the direct line of authority to the Secretary of State through the new Undersecretary underlines the key policy advantage for global refugee issues.

A Bureau of Citizenship and Passport Affairs would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship functions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located at the new or expanded immigration offices noted below.

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[2] The Commission makes no recommendation regarding the management or organization of the overseas refugee and humanitarian assistance programs operated by PRM and the USAID Bureau for Humanitarian Response. These functions could remain within the Undersecretary for Global Affairs or be brought under the new Undersecretary for Citizenship, Immigration, and Refugee Admissions.

Overseas citizen services would continue to be handled within the new consolidated organization, utilizing the DOS substantial domestic and overseas staff. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad. In some countries experiencing instability, an increasingly important activity is organizing Americans living or working in those areas into networks for efficient communication of information and warnings.

Quality Assurance Offices would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications process is a low priority in an office that is also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses, such as those recently identified in the naturalization process.

Some adjudication decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. At present, DOS has procedures for some internal supervisory review of consular decisions, but it has had no need for procedures to review refusals of applications at earlier stages of adjudication. With expanded responsibilities, DOS will need to develop a comprehensive internal review process that ensures that errors are corrected with minimal disruption to the applicant and the agency.

Quality assurance requires good records. The accrued personal records of each immigrant must be accurate, up-to-date, and retrievable at each adjudicative stage: (1) petition/immigrant visa; (2) alien resident/green card; (3) naturalization; and (4) passport. The creation and maintenance of the alien filing system ("A" files) should be reviewed to assure its maximum utility in the adjudicative flow noted above. The absolute need for good immigration records cannot be overstated.

Standardized and flexible records management and the consolidation of domestic and overseas adjudication functions will greatly enhance antifraud capabilities. At present, fraud often is not discovered until after a government agency has given the case one or more approvals and the alien appears for his or her visa. The resources are not now in place for adequate review of questionable petitions, and communications between overseas posts and domestic agencies are not adequate. Even when they receive information from overseas posts about likely fraud, the domestic agencies generally do not follow up with further investigation. Consolidation within the Department of State would overcome poor coordination and communication and permit more antifraud efforts at the beginning of the process, where they are most effective. A fraudulent entry prevented, a work permit not issued to an unauthorized person, or an ineligible alien prevented from naturalization—these are far more preferable to trying to rescind a benefit granted in error.

With respect to the domestic field structure for implementing these programs, The Regional Service Centers and National Visa Center would continue to be the location of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the RSCs to the NVC when the applicant for admission is overseas. Eventually, however, the functions of the Service Centers and the Visa Center might be consolidated. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. The Department of State already operates fifteen passport offices throughout the United States, many in areas of high immigrant settlement. These offices, however, are not set up for high volume interviewing. New offices, designed specifically with immigrant services in mind, would be needed. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

Immigration-Related Employment Standards (DOL)

The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor. These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the

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best equipped federal agency to regulate and investigate *employer compliance* with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Responsibility for enforcing compliance with these requirements currently lies within both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA], Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these functions in conjunction with their other worksite labor standards activities.

These increased immigration-related responsibilities would require increased DOL staff and resources. In addition to performing all worksite inspections, DOL would assume new employer sanctions responsibilities. Specifically, the Commission makes the following recommendations regarding the DOL role in regulating the worksite to ensure the protection of U.S. workers.

Sanctions against employers who fail to verify work authorization. Among its provisions that address the problem of unauthorized immigration, the Immigration Reform and Control Act of 1986 made it unlawful for an employer knowingly to hire any alien not authorized to work in the U.S. IRCA requires all employers to check the identity and work eligibility documents of all workers hired. Upon hiring, employees must sign an I-9 Form certifying eligibility to work and that the documents they present to the employer are genuine. The employer then signs the form, indicates which documents were presented, and attests that they appear to be genuine and to relate to the individual who was hired. IRCA established penalties both for employers failing to comply with this process and for employers knowingly hiring unauthorized aliens. Pilot testing of a more rigorous verification process recommended in the Commission's

1994 report and adopted in large part in the immigrant legislation passed in 1996 addresses verification problems arising from the widespread use of fraudulent documents by illegal aliens.

The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by the Department of Labor. Although DOL already conducts many of these investigations, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.

At present, INS has the principal responsibility for employers sanctions enforcement, including: investigations and prosecution of "knowing hires" of illegal aliens and paperwork violations; worksite raids that apprehend and remove illegal aliens; and development and maintenance of employee eligibility verification programs designed to help employers determine which individuals are authorized to work in the United States. DOL also reviews employer compliance with the employer sanctions verification processes in the course of its on-site visits to workplaces and as part of regular labor standards enforcement activities. DOL Wage and Hour and OFCCP personnel inspect the I-9 Forms on file and notify INS of the results of such inspections. DOL also is authorized to issue warning notices to employers when deficiencies are found in an employer's verification process. In practice, however, DOL has rarely issued such warnings.

Although INS and DOL jointly enforce the employer sanctions provisions, INS has the primary responsibility, including assessing civil penalties and initiating legal action. A Memorandum of Understanding between DOL and INS retains for INS the responsibility for promulgating employer sanctions program policy.

Consolidating verification enforcement at DOL gives responsibility to an agency with extensive experience regulating business compliance with labor standards, an expertise largely lacking at INS. It also permits a relatively high level of enforcement activity, as DOL completes far more employer visits than INS. The number of employer sanctions cases completed by INS has decreased sharply from 14,311 in 1990 to 5,211 in FY 1996, of which 90 percent were cases in which the agency had some reason to believe a violation occurred.[3] Over the past several years, the number of Wage and Hour on-site investigations also has decreased substantially but is still well above the INS level. The DOL reduction results largely from a greatly expanded use of expedited investigations in the form of employer self-audits and conciliations in place of on-site investigations. For example, Wage and Hour conducted more than 42,000 on-site investigations and corresponding I-9 inspections in FY 1990, but less than 23,000 in FY 1996. OFCCP conducts some 4,000 on-site inspections each year. In FY 1996, approximately 70 percent of Wage and Hour investigations were complaint-driven; the remaining 30 percent were directed or targeted. Wage and Hour devotes the equivalent of twenty-one full-time employees to I-9 inspections, OFCCP the equivalent of eight.

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[3] The lowered activity, nevertheless, represents more targeted and effective enforcement. The number of arrests during this same period increased more than 50 percent. In 1,024 cases the employers were fined; warnings were issued in 669 cases; $4,853,288 was collected in fines; and 13,848 undocumented workers were arrested.

The Commission recognizes DOL concern that from the begining its assumption of an employer sanctions enforcement role created a potential conflict with its broader mission of protecting the wages and working conditions of workers. Its inspectors worry that workers' fears that such employer sanction actions might result in INS apprehension and deportation could have a "chilling effect" on those workers who might—and should—come forward to report workplace abuses. For this reason, DOL has been extremely wary of crossing the hard-to-distinguish line where sanctions-related activities might effectively frustrate its ability to protect deserving workers.

The Commission believes that DOL participation in verifying that only authorized workers are hired should be seen as integral to its mission of protecting U.S. workers. DOL has an essential interest in reducing illegal migration as those employers who hire illegal aliens are more likely to violate the minimum labor standards that DOL is charged with enforcing. A reduction in levels of illegal migration could well be the most effective tool available to enhance protections for legally authorized workers. The primary responsibility of DOL is protecting American workers, and transfer of employer sanctions enforcement to DOL represents the best option for raising the level of enforcement to a point that presents a real deterrent to the employment of undocumented workers.

Enforcement of skill-based immigrant and limited duration admissions requirements. In our 1995 report to Congress, the Commission urged adoption of streamlined procedures for the admission of skilled foreign workers whom U.S. businesses wish to hire. We continue to believe that an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers.

To prevent abuse of an expedited system, an effective postadmissions enforcement scheme is necessary.

Upon adoption of an expedited process for the admission of both immigrant and temporary workers, DOL should be given responsibility and resources for enhanced monitoring of employers' fulfillment of the attestation terms they filed to bring in workers. As discussed above, decisions on who will be admitted under the various skill-based admission categories would be made by the Department of State.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of administrative fines as well as barring egregious or repeat violators from petitioning for the admission of permanent or temporary workers.

When DOL has concluded that an employer is an egregious or repeat violator, and any subsequent administrative appeal has been decided, it would notify the DOS Bureau of Immigration Affairs of such findings, with a recommendation about barring the employer from petitioning for the admission of foreign workers for temporary or permanent employment. The Bureau of Immigration Affairs would then determine if such a debarment is to be made and would notify the employer of its decision. The employer would have the option of appealing such a decision.

Agency for Immigration Review

The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch.

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The Commission believes that a system of formal administrative review of immigration-related decisions—following internal supervisory review within the initial adjudicating agency—is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law in individual cases and across the system as a whole.

Experience teaches that the review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

To the extent that administrative review of immigration-related decisions is authorized under current law, such review is conducted by several Boards and units located in the Departments of Justice, Labor, and State. For example, within the Department of Justice, the Executive Office for Immigration Review, a separate agency established by regulation in 1983, oversees the system of immigration courts, as well as the Board of Immigration Appeals [BIA]. The BIA, a fifteen-member panel appointed by the Attorney General, has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal proceedings, and requests for relief made in those proceedings. In addition, the BIA adjudicates appeals in several other categories of cases, such as bond determinations, fines, rescission of adjustment of status, and certain family-based visa petitions.

Supplementing their normal hearing docket, Immigration Judges now conduct the final review of the "credible fear" of persecution determinations made in the admission/inspection process, as well as determinations that an alien seeking admission is not currently a lawful permanent resident, refugee, or asylee as he or she claims.

The Office of the Chief Administrative Hearing Officer [OCAHO] also is housed in EOIR and is responsible for administering the hearing process issues arising under the employer sanctions, anti-discrimination, and document fraud provisions of the Immigration and Nationality Act.

Within the Immigration and Naturalization Service there is an Administrative Appeals Office [AAO], whose component parts include the Administrative Appeals Unit [AAU] and the Legalization Appeals Unit [LAU]. Unlike the BIA, the AAO does not have a decisionmaking board. Rather, the Chief of the Unit reviews and signs off on decisions prepared by individual examiners. AAO has appellate jurisdiction over petitions and applications in no fewer than thirty-nine subject areas, among which are decisions relating to the breaching of bonds, employment-based visa petitions, adjustment of status for Indochinese refugees, petitions for Amerasian children, fiancé(e)s, orphans, temporary workers, permission to reapply for admission after deportation or exclusion, reentry permit waivers for certain grounds of excludability, certification of schools for acceptance of foreign students, applications for refugee travel documents, claims to acquisition of citizenship abroad, applications to preserve residence abroad for naturalization purposes, various applications for certain certificates of naturalization, and applications for temporary or permanent resident status under the regular legalization, Special Agricultural Worker or Replenishment Agricultural Worker programs, and corresponding waivers of inadmissibility.

Appeals of denials of naturalization applications, however, are not considered by the AAO. Instead, review of such decisions occurs at the INS district office level and is conducted by an officer of equal or higher grade as the initial adjudicator. (If the initial decision denying the naturalization application is sustained, the alien may challenge the decision in federal district court, the court having jurisdiction over the ultimate swearing-in of successful naturalization applicants.)

In the Office of the Legal Adviser in the Department of State, there is a Board of Appellate Review [BAR] vested with jurisdiction to hear, in part, appeals of determinations of loss of nationality or expatriation, and denials, revocations, restrictions, or invalidations of passports.

In the Department of Labor, the Board of Alien Labor Certification Appeals [BALCA], created by regulation in 1987, hears appeals of denials of applications for labor certification.

When considering the appellate review function in its totality, it becomes apparent that responsibility for reviewing enforcement-related decisions rests primarily with the individual components of EOIR, while responsibility for reviewing benefit adjudication decisions is spread across several offices and agencies including the BIA, AAO, INS district offices, BALCA, and, for a more limited set of nationality- and citizenship-related issues, the BAR at DOS. Further, Immigration Judges and the BIA have the authority to provide certain forms of relief during deportation, exclusion, and removal hearings that can result in lawful permanent resident status for aliens.

Inasmuch as the underlying benefits and enforcement functions performed by the immigration system are themselves dispersed among several Departments, it is not surprising to find that formal administrative review of decisions made in the context of performing those functions is likewise dispersed. However, in light of our recommendations that responsibility for the enforcement of the immigration laws be placed with a new Bureau for Immigration Enforcement in the Department of Justice and that all citizenship and immigration benefits adjudications be removed from the Department of Justice and instead be consolidated in the Department of State, we find that a corresponding change in the placement of responsibility for the review function is in order.

Even with the assignment of the benefits adjudication function to DOS and the enforcement function to DOJ, interrelationships will exist between eligibility for benefits and enforcement actions. Indeed, eligibility for an immigration benefit may be an avenue to relief from deportation, exclusion, or removal while certain immigration violations may present barriers to attaining legal status. For example, favorable disposition of a petition or application by the benefits agency may collaterally resolve a deportation or removal issue. Aliens in enforcement proceedings may be eligible for certain forms of relief involving the same types of legal questions arising in the context of benefits adjudication outside of proceedings—or aliens in proceedings may be foreclosed from eligibility for a benefit applied for outside of proceedings. Ultimately, however, there is a need for a uniform administrative interpretation of what the law is and how it should be applied, regardless of whether the questions arise when adjudicating an application for a benefit or resolving an enforcement action. These considerations lead us to conclude that administrative review of all presently reviewable immigration-related decisions should be consolidated.

In deciding where the review function could best be performed, the Commission considered a number of options, including separate reviewing bodies for enforcement actions within DOJ and for benefit determinations within DOS, placing responsibility for review entirely with EOIR, and creation of an Article I Immigration Court.

Placing the review function in its entirety with EOIR was an attractive option, particularly given EOIR's success in both insulating the review function and achieving independence of decisionmaking since its inception in 1983. At the same time, EOIR remains located in the Department of Justice, ultimately and predominantly a law enforcement agency. Further, existing procedures permit the Attorney General to reverse or modify any decision reached by the BIA. The Commission, as well as other commentators, find this practice troubling because, at a minimum, it compromises the appearance of independent decisionmaking, injects into a quasi-judicial appellate process the possibility of intervention by the highest ranking law enforcement official in the land, and, generally, can undermine the BIA's autonomy and stature. In the end, the Commission decided the EOIR option was unworkable because of the inherent difficulty of a reviewing agency in one Department rendering decisions in cases initially decided by another Department.

Instead, the Commission was persuaded by the arguments that the review function should be completely independent of the underlying enforcement and benefits adjudication functions and that the reviewing officials should not be beholden to the head of any Department. Although the desired independence could be attained by establishing an Article I Immigration Court, such a court would be part of the Judicial, rather than the Executive Branch. The overall operation of the immigration system requires flexibility and coordination of function, including the review function, by the various agencies in the Executive Branch. Given this reality, the Commission concluded that the review function should be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by

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several existing review bodies and offices, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office and district offices (naturalization), the DOL Board of Alien Labor Certification Appeals, and the limited set of nationality and citizenship-related matters presently considered by the DOS Board of Appellate Review. The Agency for Immigration Review also would have additional responsibilities.

Creating any decisional system or tribunal requires attention to several guiding principles. First, no system can work effectively if the personnel who form the base of the decisional pyramid are insufficient in number or deficient in skills and integrity to do the job. Second, the base of any such structure cannot be expanded either in number of its personnel or in extent of its jurisdiction beyond the capacity of the next level above to review and decide the outcome. This must be achieved within a reasonable period and with a reasonable expenditure of resources. Finally, the apex of any decisional pyramid should be relatively small. With these considerations in mind, the Commission proposes the following organization for the new independent Agency for Immigration Review.

This new reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, but who would have no say in the substantive decisions reached on cases considered by any division or component within the agency. There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration courts located around the country.[4] The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now sitting Immigration Judges.

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[4] Admittedly, currently sitting Immigration Judges perform the classic review function only to a very limited degree—for the most part they serve as initial decisionmakers in cases where aliens are placed in proceedings. Notwithstanding this circumstance, however, experience teaches that Immigration Judges should find their home in the same agency as the appellate reviewing Board, not the enforcement agency that is initiating the proceedings against the alien.

The new reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications—from tourist visas to naturalization and the issuance of passports—not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments.

The administrative appeals division also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review.

When a visa is denied, important interests are at stake. To be sure, the visa applicant is adversely affected—but more importantly at stake are the interests of the United States citizens, lawful permanent residents, employers, and businesses who have petitioned the admission of the applicant or who otherwise have an interest in having the applicant present in the United States. Given the lack of formal administrative and judicial review of consular decisions, these individuals are left with little or no recourse.

The Commission believes that consular decisions denying or revoking visas in specified visa categories, including all immigrant visas and those LDA categories where there is a petitioner in the United States who is seeking the admission of the visa applicant, should be subject to formal administrative review. The visa applicant would have no right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

The appellate Board would be headed a Chairman. Both the Chair and Vice Chair would be appointed by the President for staggered terms of at least ten years. The appellate Board would have as many Members, who would be appointed by the Chair, as needed to decide appeals in a timely manner. It would consider appeals from the categories of cases presently falling within the BIA's jurisdiction, subject to the above-noted modifications. In addition, the appellate Board could entertain appeals from decisions of the administrative appeals division in cases in which a novel or significant legal issue were presented, or in any other case in which it was deemed necessary or appropriate.

The Office of the Chief Administrative Hearing Officer, presently housed in EOIR, would operate as a separate component in the Agency for Immigration Review and would perform the same work as is presently being conducted.

Of course, the precise organizational arrangements and divisional jurisdictions could be subject to future modification following a comprehensive review by the Agency for Immigration Review of the types and volume of cases received. However, to meet the challenges presented by consolidation of all immigration-related appeals in one place, and to perform its critical mission of correctly and expeditiously resolving appeals, the new reviewing agency must be given sufficient resources and staffing.

MANAGEMENT REFORM

The Commission urges the federal government to make needed reforms to improve management of the immigration system. While the Commission-recommended structural changes will help improve implementation of U.S. policy, certain management reforms must also be adopted if the agencies responsible for immigration matters are to be effective in performing their functions. Structural reforms will not by themselves solve some of the management problems that have persisted across Administrations in the immigration agencies.

The Commission urges the federal government to make needed reforms to improve management of the immigration system.

More specifically, the Commission recommends:

- **Setting more manageable and fully-funded priorities**. The Commission urges Congress and the Executive Branch to establish and then appropriately fund a more manageable set of immigration-related priorities. By this we mean establishing fewer objectives, but also setting more integrated priorities, more realistically-achievable short-term and long-term goals, and greater numerical specificity on expected annual outcomes to which agencies should be held accountable.

  The processes by which both Congress and the Executive Branch plan and allocate resources constrain the development of a more manageable set of priorities. Currently, most immigration priorities result from Legislative/Executive interaction through a multiyear budget process. Government budgeting cycles are lengthy and complex. Agencies must work simultaneously with the budgets and reporting cycles of four fiscal years.[5] Congressional action, meanwhile, consists of the doubly bifurcated processes of authorization, followed by separate appropriations in the House of Representatives and the Senate, and then by resolution in conference.

Executive Branch departments seldom identify adequately how much money they need to accomplish the entirety of a specified goal. Nor do they do a good job of scaling back or increasing objectives depending on the resources appropriated. Within the Legislative Branch, there is little coordination among congressional committees to ensure a congruence of agreed-upon priority expectations and resources actually allocated to do the job. Consequently, transparency and accountability are not built into the system. For example, Congress is not held accountable for adding new priorities without appropriating resources to accomplish all of the specified tasks. Federal agencies are neither directly nor easily held accountable for their performance in achieving or not achieving agreed-upon results.

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[5] For example, for the second quarter [January-March] of FY 1997, federal agencies were:

- For FY 1996, completing '96 year-end statistics and reports;
- For FY 1997, continuing work on implementing '97 goals and priorities;
- For FY 1998, finalizing the President's February FY 1998 Budget Submission to the Congress and explaining/defending it at congressional committee hearings;
- For FY 1999, developing the '99 budget initiatives, priorities, and strategies to be submitted to OMB under the "Spring Plan" planning process.

The Commission urges Congress and the Executive Branch to refrain from overpromising what the federal government can accomplish in implementing immigration policy. For example, rather than defining the removal of all deportable and inadmissible aliens as the priority for removal, a goal that is presently not achievable, the federal government could define removal priorities in terms of specified numbers and categories of aliens (e.g., criminal aliens) and in terms of certain strategies. For example, a "last in, first out" strategy would remove everyone who newly enters the removal system before removing persons whose cases have been pending in backlogs for some time. This priority-setting process worked well in reforming the asylum process and could be replicated in other areas.

Priority setting must be accompanied by sufficient resources to undertake the top objectives. In the case of removals, it should include resources for Investigations, Trial Attorneys, Immigration Judges, the BIA Detention and Deportation Officers, Department of State liaisons with host countries, and such needs as vehicles, equipment, training, and support. The priority should identify the problem completely and clearly and map out which part of that problem will be solved in which of several years of the priority. And then Congress should agree and the Executive Branch should be held accountable.

- **Developing more fully the capacity for policy development, planning, monitoring, and evaluation.** In general, the current immigration system suffers from an inability to develop, sustain, and clearly articulate long-term and short-term policymaking except in times of crisis. Often this has led to bad policymaking, poorly developed programs, inadequate policy coordination across departmental lines, and almost nonexistent program assessment and evaluation of outcomes. None of the main Executive Branch departments has developed a broad-based immigration policymaking capacity.

The most developed policymaking and coordination unit in the immigration system exists in the INS Office of Policy and Planning [OPP]. However, a majority of its eighty-five people and its $5 million personnel budget are related to statistics and other nonpolicymaking activities. Moreover, while it is important for the principal agency responsible for immigration enforcement to have its own policy and planning capability, OPP is not necessarily well positioned to advise the Department of Justice about immigration-related policy issues affecting other DOJ agencies. Further, under the Commission's proposed restructuring, it would make no sense for the agency responsible for enforcement to have lead responsibility for formulating policies related to legal immigration and naturalization or enforcement of immigration-related labor standards.

Each department with immigration-related responsibilities needs to perform a wide range of policy functions, including, but not limited to, long-range and strategic policy planning, interagency policy integration, policy review, policy coordination, priority setting, data collection and analysis, budget formulation, decisionmaking, and accountability. The Domestic Policy Council and the National Security Council, both situated in the White House can also play an important role in coordinating policy development across departments.

Informed policymaking requires systematic review of current policies and programs (which themselves should be informed by reliable and timely statistical information), development of a range of options, and analysis of the advantages and disadvantages (including costs and timeframes) of each. Further, immigration policy affects, and is affected by, a wide range of other issues of interest to the departments. For example, the DOL overall labor policy is affected by immigration as the foreign-born represent a large proportion of the growth in the labor force. As a proportion of the unskilled workforce, immigrants represent an even larger proportion and potential impact. Similarly, international migration and the foreign policy and national security interests of the United States are strongly connected.

The immigration-related policymaking capacities at the departmental level in Justice, State, and Labor tend to be *ad hoc* and understaffed. For example, the Office of the Deputy Attorney General [DAG] has two and one-half to three attorneys working on immigration-related policy and program coordination. These staff serve as a clearinghouse through which immigration-related concerns and policy matters pass from the responsible agencies (e.g., INS, EOIR, Office of Special Counsel for Immigration-Related Unfair Employment Practices, Office of Immigration Litigation) through the DAG to the Attorney General. Given the wide range of policy issues requiring department-level attention, these staff have an all but unmanageable policy portfolio. Much of their time is spent on routine oversight punctuated by crisis management, with little time left for long-range policy development or planning. The Commission believes more sustained and timely attention to immigration policy issues within and across departments will help improve both the formulation and implementation of programs.

interagency coordination of immigration policymaking also is particularly important. The Domestic Policy Council [DPC] already plays such a role. The Commission recommends strengthening the DPC's capacity to provide policy guidance, particularly when immigration matters affect or are affected by other domestic interests. Designation of a senior focal point for immigration policy in the DPC would enhance its ability to coordinate policy development. This role would be complementary to the enhanced role the Commission recommended for the National Security Council with regard to refugee issues. The DPC and the NSC would coordinate closely when migration issues relate to U.S. foreign policy and national security interests.

More specifically, the DPC should be mandated and staffed to: oversee federal immigration policy development across departmental and agency lines; monitor the execution and impact of new legislation, policies and programs; resolve differences within the Executive Branch, focusing on those that impede the capacity of the federal government to deliver a single, coherent message about immigration policy and priorities; serve as a forum for discussion of new ideas; coordinate liaison with and the input of advocates and other nongovernmental agencies concerned with federal immigration decisionmaking; and relay the resulting recommendations to Congress and the President.

- **Improving systems of accountability.** The Commission believes strongly that staff who are responsible for immigration programs should be held accountable for the results of their activities. Systems should be developed to reward or sanction managers and staff on the basis of their performance. This requires the development of performance measures that relate to expected outcomes. For example, the Commission earlier recommended rewarding Border Patrol staff for their effectiveness in deterring illegal migration rather than their prowess at apprehending illegal aliens. Similarly, managers responsible for adjudication of benefits should be rewarded if they lessen processing time for the approval of applications and, simultaneously, improve their detection of fraudulent cases. By contrast, managers who fail to meet recognized operating standards should be held accountable and be sanctioned for their noncompliance. Systems to reward innovation or sanction managers and staff on the basis of their performance also need to be developed. Too often, staff who try new approaches not only are not rewarded for their initiative, they are sanctioned by their colleagues and supervisors.

- **Recruiting and training managers.** The Commission believes improvements must be made in the recruitment and training of managers. As immigration-related agencies grow and mandated responsibilities increase or evolve, closer attention should be paid to improving the skills and managerial capacity of immigration staff at all levels to ensure more efficient and effective use of resources allocated.

Since 1993, the immigration system has been undergoing a tremendous infusion of new resources and, since 1996, significantly augmented statutory mandates. Either change would seriously burden even the best-run agencies of the federal government. Such infusions of new resources to INS and to several other agencies burden agency administrative and management systems. INS has not added a sufficient number of experienced, proven managers to help the agency address the many challenges it faces.

Agencies must be able to rapidly recruit, select, train, deploy, and then support new staff—and they must sustain this expansionist capacity over several fiscal years. Most of the new staff added are entry-level, necessitating on-the-job training, mentoring, and close supervision before they can be considered fully functional in their jobs.

As new staff are added, new supervisors are needed—and they too need supervisory and management training to be successful. Supervisors usually are drawn from the ranks of the operational staff, and with increased operational responsibilities, they often are unable to be freed soon enough or long enough to attend supervisory training in a timely fashion.

In addition, major changes in the immigration statutes passed in 1996 necessitate the redrafting and repromulgation of hundreds of sections of law and regulations, hundreds of new or revised forms, and training and retraining of staff just to implement these profound changes. Agencies should consider new ways in which staff are trained to do their work: e.g., training in management by objectives, in accountability, in managerial and supervisory skills. For some agencies, the skill levels—and agency cultures—are not yet adequate to be successful in fulfilling present and expected future increased managerial and supervisory responsibilities. Both additional supervisors and new skills are urgently needed.

The infusion of new skills and culture can come from two sources: (1) in-house training and retraining of existing staff; and (2) the addition—from outside the agencies themselves—of new middle- and upper-level management staff possessing those skills and the ability to apply them quickly to the immigration settings. These two sources need not be mutually exclusive; some of both may be required.

One promising recent development is the INS' new "competency-based" assessment process for Border Patrol officer promotions to supervisor. The Border Patrol is the single immigration agency receiving the greatest number of new staff over the coming next several years. The objective is to test Border Patrol officers to predict more accurately their potential for success as future supervisors. According to INS, the main focus of the system is assessment of "thinking skills . . . the way supervisors and managers must think and react on a daily basis."[6] More than 1,000 Border Patrol officers have been tested, another 1,000 will be by the end of summer 1997, and testing of all remaining eligible Border Patrol Officers will be completed by the end of 1997.

- **Strengthening customer service orientation.** The Commission urges increased attention to instilling a customer-service ethic in staff, particularly those responsible for adjudication of applications for benefits. Repeatedly, but most recurringly regarding INS, the public complains of a lack of service from both their dollar and from the personnel charged with serving them. The horror stories are too common. Most individuals coming into contact with the immigration system have paid a fee—whether indirectly (such as at airports and the inspections users fees tacked onto their ticket prices) or directly (such as through the submission of a fee with their application for a benefit). They expect and should receive service that is customer-friendly and timely. Appli-

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[6] The system is based on four assessments:

1. *Decisionmaking Situational Assessment*, measures thinking skills such as reasoning, decisionmaking, and problemsolving;
2. *In-basket Job Simulation*, measures administrative skills, such as planning/organizing and managing/organizing information;
3. *Managerial Writing Skills Exercise*, measures written communication skills; and
4. *Past Achievement Record*, measures personal qualities, such as leadership and flexibility.

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cants should be treated courteously, records should be located with ease, and accurate information should be provided in a professional manner.

The absence of a separate career track for benefits adjudicators hampers efforts to attract and retain the best federal employees to these tasks. The structural reforms we recommend should help address this problem. Currently, many of those promoted into management positions within INS moved along the enforcement career track. Its higher-paid designations frequently make them eligible for such promotions before those who spend their careers in benefits adjudication. Benefits adjudication personnel should have a career track that promotes the best performers into positions of management and leadership and provides all employees with appropriate incentives as well as models worth emulating.

The primary currency of service is information—information that should be both accurate and timely. Daily, in many locations throughout the U.S., people seeking forms, information, status checks, and interview appointments, and reporting a change of address, requesting a copy of a form in their file, or requesting or extending employment authorization create long lines around local INS offices. Immigration customers should not have to stand hours in a line to get information. Immigration processes should be reengineered to ensure that information is easily available at several locations and through several electronic means and, when given, is accurate. Several ways to improve access to forms and information, many electronic, already are in development. Forms increasingly are available on Information Kiosks located in high volume immigration centers; soon they will be available over the Internet. The website developed by the Department of State's Bureau of Consular Affairs makes available pertinent information on conditions throughout the world.

Customer-service personnel should be both initially well-trained and periodically tested to ensure they remain current with the latest changes and interpretations of policy. In addition, there should be a formal quality assurance program. For customer service representatives working on the lines at district field offices or answering questions on the telephone, quality assurance of their work should include the possibility for supervisors to monitor the correctness and manner of delivery of the service given.

- **Using fees for immigration services more effectively.** The Commission supports the imposition of users fees, but emphasizes that: (1) the fees should reflect true costs; (2) the agencies collecting the fees should retain and use them to cover the costs of those services for which the fees are levied; (3) those paying fees should expect timely and courteous service; and (4) agencies should have maximum flexibility to expand or contract their response expeditiously as applications increase or decrease.

The current situation has a number of weaknesses. First, some programs are now undercharging (or not charging) fees while others reportedly are overcharging. INS is now reviewing its fees to determine where adjustments should be made. Second, some fees go into the General Treasury while others are held by the agencies collecting them and used for the function for which they were collected. Third, agencies do not have effective systems for accurately anticipating the volume of applications, forecasting their fee receipts, and requesting appropriate levels of funding from fee accounts to meet demand. Fourth, when there is an unforeseeable increase in the number of applications, there is a significant lag time before an agency is able to use the increased fee revenue to expand its service capacity. For example, it took several months to develop a reprogramming request and then obtain permission for a reprogramming of funds when naturalization and section 245(i) adjustment applications increased significantly. This delay resulted in a growing backlog of persons awaiting service. Providing more flexibility would require agreement from the congressional appropriations committees that they need not approve the reprogramming of fees when the need for additional resources is related solely to an increase in the volume of applications.

The Commission reiterates its 1994 recommendations regarding the need for improvments in immigration data collection, coordination, analysis, and dissemination.

IMPROVED DATA AND ANALYSIS

The Commission reiterates its 1994 recommendations[7] *regarding the need for improvements in immigration data collection, coordination, analysis, and dissemination.* Although progress has been made, much more needs to be done. Reliable and timely data are crucial to the effective enforcement of immigration law. They are the basis for the effective implementation of ongoing and new programs. And, ultimately, they are the only means of assessing results achieved and reaching the conclusions necessary for responsible policymaking.

Data problems throughout the immigration system have long been evident. The Panel on Immigration Statistics of the National Research Council concluded in 1985 that the "story" about

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[7] U.S. Commission on Immigration Reform. 1994. *U.S. Immigration Policy: Restoring Credibility*. Washington, DC. 179-86.

immigrant data was "one of neglect."[8] Despite increases in congressional funding and some notable improvements at the INS, the available data remain incomplete—a problem that exists to some degree in each agency involved in the immigration system.

The Commission believes there is a pressing need for improvements in immigration data collection, standardization, intra- and inter-agency linkages, timely dissemination, rigorous analysis, and use in policymaking. The Commission urges the federal government to support continuing research and evaluation on all aspects of immigration. Further, the Commission urges the Congress to insist upon the organizational structures needed to create and maintain high-quality statistical data.

The statistical function must be given high priority and sufficient institutional control and authority. Quality data do not evolve as a by-product of disjointed administrative data-gathering responsibilities. Quality data ultimately require a statistical system that can satisfy policy-relevant, and management information needs through an integrated, centrally-coordinated approach.[9]

In recent years Congress has addressed the statistical problem by requiring improvements in specific arenas—primarily through automation—and by appropriating increased funding. These steps are encouraging and the Administration appears to have embarked successfully on some programs for automated data collection. The INS already has established separate systems for data collection and retrieval for its core enforcement and benefits functions.[10] Under the

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[8] Levine, D. B.; Hill, K.; Warren. R. (eds.). 1985. *Immigration Statistics: A Story of Neglect*. Washington, DC: National Academy Press.

[9] Norwood, J. L. 1995. *Organizing to Count: Change in the Federal Statistical System*. Washington, DC: The Urban Institute Press.

[10] However, there still remain more than one dozen separate data collection systems that often suffer from various internal deficiencies and remain to be integrated into larger core systems.

Commission's proposals it is essential that the statistical systems under DOJ enforcement and DOS benefits retain an automated and integrated design. However, statistical systems cannot be improved simply by automating data collection.

As the Panel on Immigrant Statistics concluded, it would be naive to assume that automation will solve the problems that have been evident for too long a time in statistical operations.[11] The Panel cited an agency-wide lack of understanding and commitment to high-quality data and the need for the development and acceptance of appropriate standards as the primary causes of today's inadequate state of affairs. It is necessary to change priorities from data collection solely for individual division administrative purposes to the production of data for integrated enforcement, benefits, quality control, and analytic uses.

Congress also has been critical of the way in which data has been disseminated. In the context of congressional debate, sporadic release of data has the potential for politicizing statistics. Regular and scheduled release of statistics, preferably monthly, can go a long way toward depoliticizing data and focusing attention on unbiased analysis. The Department of Labor's Bureau of Labor Statistics, with an autonomous and scheduled release of data, offers one model for the dissemination of data with no relation to the policy calendar.

The Commission believes each agency with immigration responsibilities should have a statistical office charged with final authority over data coordination, agency-wide definitions and systems integration, quality monitoring, research and analysis, and regular dissemination. Data collection and analysis must be a priority and be reflected in the statistical branch's organizational placement. Only sufficiently high placement and authority can ensure that its mission is successfully discharged.

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[11] Levine, D. B.; Hill, K.; Warren, R. (eds.). 1985. *Immigration Statistics: A Story of Neglect*. Washington, DC: National Academy Press. See also: Morris, M.D. 1985. *Immigration—The Beleaguered Bureaucracy*. Washington, DC: Brookings Institution.

Interagency cooperation and coordination of agencies that produce or use immigration data can enhance the data's timeliness and value significantly. Cooperation also can lead to significant gains in the use of scarce resources—be they funding, staff, time, or public tolerance. Such coordination must insure monitoring of progress, adherence to standards, common definitions, timeliness in publication, and full disclosure of methods, methodology, procedures, and problems. Only then will significant improvements occur.

Consideration should be given to the creation of a *permanent* taskforce on immigration statistics that would coordinate interagency efforts to improve all aspects of the statistical system. Various *ad hoc* and temporary governmental working groups have tackled a part of, or the whole of, the data collection system.[12] A formally-charged taskforce would craft the basis for interagency agreements and possible statutory and regulatory changes. To be effective, the taskforce would require appropriate institutional support. It would marshal interagency collaboration on data whenever feasible, especially on definitional issues and on what information is collected. The taskforce should conduct an exhaustive review of the data collected in each agency, identify overlap or potential interagency data linkages, evaluate technical and computer needs, propose standard definitions, and make recommendations.

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[12] The INS has convened an Interagency Working Group on Immigration Statistics that has reviewed various data problems. It has had a significant impact on Administration funding for an immigration component in the Current Population Survey, the preeminent U.S. source of data on national trends and on the U.S. labor force. It also made significant contributions to ultimate Administration support for the New Immigrant Survey.

Information Needs

Little can be done to make significant advances in our understanding of immigration without improvements in data and targeted research. Policymaking is particularly hampered by lack of knowledge from detailed surveys and longitudinal studies in three areas: the experiences and impacts of immigrants; the experiences and impacts of foreign students and foreign workers admitted for limited duration stays; and the patterns and impacts of unlawful migration. There is a seemingly inexhaustible range of options for collecting data and, especially, topic areas needing research.[13] Examples of pressing analytic data needs are discussed below.

Legal Permanent Admissions

The gap between questions about legal immigration and the data needed for answers is greater than in almost any other area of public policy. It is not now possible to address fully pressing policy questions about the changing skill makeup of newly admitted immigrants over time, the transitions between temporary and permanent residence status, the effects of today's immigration on future demand through family reunification, and the success and impact of immigrants in the U.S. economy.

To answer such questions, policymakers have a crucial need for both data on detailed classes of admission and the capacity to track changes over time. Recently, the Administration funded the collection of data on immigrants in the monthly Current Population Survey. However, these and other survey data neither collect detailed information about status nor distinguish between legal and illegal foreign residents, much less between the various temporary or permanent admission statuses.

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[13] Edmonston, B. (ed.). 1996. *Statistics on U.S. Immigration: An Assessment of Data Needs for Future Research.* Washington, DC: National Academy Press.

The INS yearly admissions data are the most immediate source of information on immigrant entry class. Yet, the data serve primarily as a minimalist administrative count of individuals. Identifying family units would make it possible to evaluate admissions as they really are: the immigration not of individuals but of families. The quality and type of data gathered on labor force status depends on definitions that do not conform with modern concepts. Including information about immigrant sponsors would go far to increase our ability to make reliable forecasts about the numbers and skill composition of tomorrow's immigrants.

The New Immigrant Survey discussed in the introduction to this report demonstrates the policy value of expanded data on new admissions. For the first time we have an accurate picture of education and English ability, as well as the capability for studying transitions from temporary to permanent status, the characteristics of sponsors, and the financial well-being of new entrants. Designed as a pilot, the NIS should be seriously evaluated for its costs and for its value as a model for a longitudinal survey.[14] Experts agree that only a longitudinal survey ultimately can answer Congress' most pressing questions.[15]

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[14] A longitudinal survey would, among other things, help address serious deficiencies due to "lost data sources." In the 1950s, the U.S. discontinued collecting data on persons leaving permanently. Without accurate emigration data, demographic estimates of the size and growth of the foreign population are imprecise exercises. In the 1980s, the "Alien Address" database was discontinued. Knowing the size of the legal population makes it possible to get significantly more precise estimates of the size and location of illegal residents.

[15] Levine, D. B.; Hill, K.; Warren. R. (eds.). 1985. *Immigration Statistics: A Story of Neglect.* Washington, DC: National Academy Press. Edmonston, B. (ed.). 1996. *Statistics on U.S. Immigration: An Assessment of Data Needs for Future Research.* Washington, DC: National Academy Press. National Research Council. (J.P. Smith, B. Edmonston, eds.). 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration.* Washington, DC: National Academy Press.

Finally, it is essential to improve our knowledge of newly naturalizing citizens. In the past few years there have been dramatic increases in the numbers of persons naturalizing, but little is known about the individual circumstances under which residents choose to naturalize. Only more detailed knowledge about such things as eligibility and motivations will yield indicators to forecast the number of future applications. Accurate forecasts are needed to meet demand and to organize processing integrity.

Limited Duration Admissions

There exists remarkably little comprehensive or policy-relevant knowledge or research on the administration of the LDA system or its impact on the U.S. economy.[16] Problems in the LDA data system are even more pervasive than in the legal permanent system.

The Commission believes that improvements in data collection and analysis of LDAs and the impact of these admissions should be considered an urgent priority. The INS has made significant efforts to improve its data and has directed funds toward new computer systems. The Commission urges the Congress to support continued innovation in data collection and storage retrieval. As in our last report, the Commission suggests that building upon existing administrative recordkeeping will be most cost-effective.

Improved data and new research efforts are especially critical as there is remarkably little known about the number, characteristics, and impact of LDA workers and foreign students. For example, important basic information is lacking on LDA workers—their geographic location in the U.S., occupations, or labor-market effects. Longitudinal data and analysis are needed regarding the transition of LDA workers to immigrant status—directly or through other temporary categories. Likewise, little is known about the total population and characteristics of foreign students, their geographic distribution, academic status, duration of stay, employment activities, or change and adjustment of legal status.

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[16] Lowell, B.L. (ed.). 1996. *Temporary Migrants in the United States.* Washington, DC: U.S. Commission on Immigration Reform.

There is a critical need to continue and extend improvements in departure data—one of the more crucial components of the entire immigrant information system. Precise exit information is necessary to track duration of stay, compliance with visa regulations, and overstays. Further, the utility of current data could be meaningfully extended, for example, by collecting accurate information on intended destination. The Commission endorses continued emphasis on the improvement and introduction of electronic/paperless mechanisms for the collection of departure data.

Unauthorized Migration

The measurement and study of illegal aliens—a clandestine population—always has been fraught with difficulties. Ironically, a focus on estimates of this population may well have produced more accurate numbers than official figures on legal residents. Yet, if our research knowledge of legal immigrants is circumscribed, and research on LDAs nearly nonexistent, the analysis of the illegal population, while extensive, suffers from combinations of problems.

At a rudimentary level, there is a need to know more about the number of illegal aliens who entered without inspection [EWI] in contrast to temporary admittees who overstay the time permitted on their LDA visa.[17] In terms of enforcement efforts the distinction is important, but there is an unknown range of error in current estimates. What proportion fall into each type? Improvements in existing databases are sorely needed along with research into innovative and reliable means of estimating each population.

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[17] U.S. General Accounting Office. 1995. *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*. GAO/PEMD-95-20. Washington, DC: U.S. Government Printing Office.

Much could be gained from knowing about the varied means by which EWIs and LDA overstayers come to the United States and the length of their stay. If, for example, LDA overstayers had shorter durations of residence in illegal status, then their proportion of the total illegal population is, in a sense, more "fluid." At a more critical extreme, subpopulations of highly mobile and circular migrants may stay for only short periods in the United States. These highly mobile individuals would not be fully captured in standard estimates of the illegal population.[18]

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[18] There are few reliable estimates of the highly-mobile, illegal subpopulation, nevertheless, *ad hoc* estimates increasingly are heard. A correct estimate of this population should adjust for its average, or "person year," size. For example, if 100 illegal workers spent one-half year working in the United States, they would earn the yearly wages of 50 workers. See Heer, D.M. 1990. *Undocumented Mexicans in the United States*. Cambridge: Cambridge University Press.

CONCLUSION

This report concludes the work of the U.S. Commission on Immigration Reform. Together with our three interim reports, this final set of recommendations provides a framework for immigration and immigrant policy to serve our national interests today and in the years to come. The report outlines reforms that will enhance the benefits of legal immigration while mitigating potential harms, curb unlawful migration to this country, and structure and manage our immigration system to achieve all these goals. Most importantly, this report renews our call for a strong commitment to Americanization, the process by which immigrants become part of our community and we learn and adapt to their presence. Becoming an American is the theme of this report. Living up to American values and ideals is the challenge for us all.

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APPENDIX A

IMMACT: PROVISIONS AND EFFECTS

The Immigration Act of 1990 [IMMACT] attempted to balance a number of competing interests. First, it established annual overall limits on total legal immigration, but allowed those limits to be "pierced" in response to changing levels of nuclear family applications and humanitarian admissions. Second, it created a guaranteed minimum number of visas for close family members if there are increases in the number of immediate relatives of U.S. citizens seeking entry. Third, it increased the number of persons admitted for employment reasons, with higher priority given to professionals and highly-skilled persons. Fourth, it created a diversity class of admissions for persons from nations that have not recently sent many immigrants to the United States.

IMMACT legislated a worldwide level of 675,000 family-based, employment-based, and diversity immigration admissions per year.[1] This ceiling may be pierced if immediate relative applications exceed expectations and does not include refugee, asylum, or other humanitarian admissions. The worldwide pierceable ceiling represented an increase of about 40 percent in the permitted number of admissions compared to previously legislated levels. Prior to IMMACT, immediate relatives (who entered without regard to numerical limits) averaged about 210,000 per year, and numerically-limited categories were set at 270,000. Humanitarian-based admissions were set outside of regular immigration ceilings, as they continue to be under

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[1] A transition worldwide level of 700,000 admissions was in effect during FY 1992-1994. Many admissions during the first two years were from the pre-IMMACT backlog and do not necessarily reflect the aims of the new legislation.

IMMACT. Most of IMMACT's legal immigration provisions went into effect in FY 1992, with the permanent diversity program beginning in FY 1995.

More specifically, IMMACT contained the following provisions affecting immigration numbers and immigrant characteristics.

Family-based admissions. IMMACT established a worldwide limit of 480,000 family-based admissions. Immediate relatives—including spouses, minor children, and parents of U.S. citizens—continue to enter without regard to numerical limits. Their actual admission numbers are subtracted from the worldwide limit to determine how many other family members (i.e., adult unmarried children of U.S. citizens, spouses and minor children of legal permanent residents, married children of U.S. citizens, and siblings of adult U.S. citizens) will be permitted to enter the following year. IMMACT set a minimum floor of 226,000 numerically-limited family immigrants. In addition, unused employment visas are transferred to the next year's family admissions.

The actual number of admission slots available and used each year varies. During the past five years, annual family admissions have been as low as 460,653 in FY 1995 and as high as 595,540 in FY 1996.[2] Variation can be seen in both the immediate relative and the numerically-limited categories.

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[2] Processing problems explain some of the below average numbers for FY 1995 and above average ones for FY 1996. Higher demand for adjustment of status within the United States followed enactment of § 245(i) that permits those not in lawful status to pay a penalty to obtain their legal immigration status in the U.S. INS was not prepared for the large increase in applications, resulting in an adjustment backlog. Some of those who normally would have received their green card in FY 1995 had to wait until FY 1996. In the meantime, the large number of unused FY 1995 employment-based admissions were transferred to the family categories for FY 1996.

One goal of IMMACT was to reduce waiting times, particularly for the spouses and minor children of legal permanent residents (FB-2A Preference). Recognizing that the 2.7 million aliens who were given LPR status by the Immigration Reform and Control Act would petition for their immediate families, IMMACT provided three years of additional visas for spouses and minor children of legalized aliens. Because per-country limits sometimes create admission backlogs for affected nationalities, it also required that 75 percent of the FB-2A numbers would be exempt from per-country limits.

The family categories have attracted far more applicants than there are admission visas and, hence, large backlogs have developed. The total backlog of family applicants stood at 3.5 million at the start of FY 1997, essentially unchanged from FY 1996. About one million individuals are awaiting legal admission under FB-2A. As projected by the Commission in its 1995 report, the numbers on the FB-2A waiting list have declined slightly from the prior year.[3] However, the waiting time until admission has continued to grow since IMMACT. From an already long wait of just less than two and one-half years in FY 1992, the waiting time in the backlog has continued to increase each year until, at the time of this report, it is almost four and one-half years. The priority date for admission advances little each month, meaning longer and longer waits for new applicants. Anticipation of such trends led the Commission to recommend in its 1995 report a series of changes to the numerically-limited family categories, but no congressional action was taken. The Commission has projected that waiting times could reach as long as ten years for applicants at the end of the waiting line.[4]

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[3] Much of the initial rapid increase in the spouse and children of the LPR backlog was due to IRCA legalization. Now most of those family members already have made their applications and, indeed, new applicant numbers have declined steadily since 1992. Even so, there were still 82,521 new applicants entering the backlog in 1996. In most years, about 90,000 admission slots are available for FB-2A, meaning that the waiting list will experience only modest decreases in the future.

Employment-based admissions. IMMACT extensively revised the employment-based categories and numbers. The legislation emphasized the admission of high-skilled persons and added a new category for investors. IMMACT allows up to 140,000 employment-based admissions each year, up from an annual limit of 54,000 under previous statute. Covered under these numbers are the principal applicants, as well as their spouses and minor children (both referred to as beneficiaries). The numbers are distributed over several categories, generally reflecting educational and skill level. IMMACT also placed a cap of 10,000 admissions on lesser-skilled admissions.

Employment-based admissions increased significantly under IMMACT, but they have not approached the annual ceiling of 140,000 (except when the Chinese Student Protection Act of 1992 [CSPA] permitted Chinese who had entered the U.S. before Tiananmen Square to become permanent residents under the employment category). Subtracting out the onetime admissions under CSPA, skilled and unskilled employment-based admissions have gone from about 100,000 in FY 1994 to 81,000 in FY 1995 and back up to 117,000 in FY 1996. The increase in FY 1996 appears to reflect a catchup from administrative processing delays in the previous year. The most notable increase through this period has been in the first preference, particularly in the subcategory for executives and managers of multinational corporations.[5] The first preference had fewer than 5,500 admissions in IMMACT's first year of implementation but now has more than 25,000 admissions.

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[4] In principle, the recent surge in the naturalization of potential sponsors could reduce the backlog and waiting time of spouses and children of LPRs. Sponsors who have naturalized can petition for the admission of their spouses and minor children under the unlimited citizen reunification category, thus effectively moving them out of the queue. However, this process will not decrease the backlog in an expeditious fashion. Even assuming rather high rates of naturalization, the Commission projections also show that it will take at least another decade before today's backlog can be reduced to acceptable numbers. Surprisingly, early indications are that the large volume of naturalizations since 1995 have not resulted in increases of relatives of U.S. citizens in the family preference total. (DOS Bureau of Consular Affairs. 1997. *Visa Bulletin* 73:7 A7.)

In terms of the backlog of employment-based visas, the category of unskilled workers (EB-3B preference) remains heavily oversubscribed as of FY 1997, with nearly a seven-year wait for admission for all nations. Otherwise, only India is oversubscribed with nearly a two-year wait for admission for employment professionals with advanced degrees (EB-2) and skilled workers (EB-3A). Employment-based admissions must be closely monitored to know whether or not they reach their limit in the future and whether per-country limits impede timely entry of the highly-specialized workers who are genuinely needed by U.S. business.

Diversity admissions. The diversity immigrant provisions in IMMACT seek to increase national diversity in the immigrant population by widening access for immigrants from underrepresented countries whose citizens have neither strong family nor job ties to the United States. The permanent program began in October 1994. It provides 55,000 admission slots per year to nationals of countries that have sent fewer than 50,000 legal immigrants to this country over the previous five years. Each applicant must have a high school education or its equivalent or two years of work experience in an occupation requiring at least two years of training or experience. Persons eligible to enter are chosen by lottery. In FY 1996, some eight million applications were received by the Department of State.

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[5] Multinational corporations include U.S.-based companies with overseas operations and large and small foreign businesses that establish U.S. offices, subsidiaries, or affiliates.

About 40,000 diversity immigrants entered in FY 1995 and 58,000 in FY 1996. As with other admission categories, the FY 1995 numbers are misleading because of the delays in processing adjustments of status. Unlike other categories, however, the diversity program does not permit a waiting list of unprocessed applicants who will be interviewed the following year.

Refugee and other humanitarian admissions. Various categories of people may obtain LPR status outside of the worldwide pierceable ceiling. The largest groups are refugees admitted from overseas as part of the refugee resettlement program and asylees granted asylum domestically. After one year, refugees and asylees become eligible to adjust to LPR status. They are counted when the adjustment occurs. Other humanitarian-based admissions include Amerasians, parolees permitted to adjust status under special legislation, and individuals granted suspension of deportation. The total numbers admitted under these categories vary depending largely on the annual refugee admission levels determined through Presidential-Congressional consultation. All humanitarian admissions reached a high in FY 1994 of 160,000 and dropped modestly to 123,000 and 138,000 in FYs 1995 and 1996, respectively.

Future trends. As indicated, the year-to-year admissions under IMMACT have followed an up-and-down course. Future trends are difficult to project. A number of factors may increase future admission levels. Given the pace with which immigrants are naturalizing, growth in the number of immediate relatives may occur as newly naturalized citizens petition for their families. While LPRs may petition for spouses and minor children, until naturalization, they may not petition for the admission of a parent. It is also unlikely that the numerically-limited family preferences will be undersubscribed in the foreseeable future. Continuing backlogs ensure that available family quotas, as well as any unused employment numbers transferred to the family categories, will be filled.

At the same time, new provisions adopted in the recent welfare reform (The Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 may dampen future admissions despite the lengthy waiting lists. In particular, IIRIRA requires all family members to be sponsored by a U.S. petitioner whose income meets at least 125 percent of the poverty level. Sponsors must sign legally-binding affidavits under which they pledge to provide any financial support needed by the new immigrants. In addition, the welfare reform legislation bars noncitizens from most income transfer programs. Some U.S. family members may be unwilling or unable to take on these new financial responsibilities for new immigrants.

APPENDIX B

STATEMENT OF COMMISSIONER WARREN R. LEIDEN

While I agree with most of the findings and recommendations of the Commission majority, there are two subjects of major recommendations on which I am moved to make separate statements—one in dissent (Legal Permanent Admissions) and one in concurrence (Structural Reform).

Legal Permanent Admissions

Legal immigration needs reform of priorities and allocations, but current levels of legal immigration are in the national interest. Virtually all the research and analysis received by the Commission indicated that the current levels of legal immigration continue to provide a net positive benefit to America in a multitude of ways. Whatever interest is examined—economic, social, political, scientific, or cultural—the current levels of legal immigration are found to benefit each of these aspects of American life. The current levels of legal immigration that were established by the Immigration Act of 1990 have served this country well. And, after the current onetime increase that is the result of the 1986 legalization program, the overall number of legal immigrant admissions can be expected to moderate and decrease.

The current overall levels of legal immigration should be maintained until there is another opportunity for review in three to five years.

The majority recommends a one-quarter reduction in legal immigration from current levels, but not now, rather in five to eight years.

This reduction comes at the expense of thousands of American families who have been patiently waiting for legal reunification with their close relatives overseas. It is accomplished by eliminating three of four family preference categories and simply shutting the door on thousands of sons, daughters, and siblings of U.S. citizens.

There is no convincing argument for this drastic reduction in legal immigration now or years from now. Current levels of legal immigration clearly serve the national interest and can better do so if priorities and allocations are reformed.

Prioritize family-based admissions without eliminating family reunification. Spouses and minor children of U.S. citizens and lawful permanent residents [LPRs] and parents of U.S. citizens should receive the highest priority for immigration, but this can be accomplished without eliminating the immigrant categories for adult sons and daughters or siblings of U.S. citizens.

The family preference categories should be reordered, placing the spouses and minor children of LPRs at the top, with a "spilldown" of unused visas going to the remaining family categories. This approach would ensure the quickest reduction in the shameful backlog of spouses and minor children of LPRs, without sacrificing the family unification of those sons and daughters who simply turned 21 years old. The majority, by its determination to reduce legal immigration, is forced to call for the elimination of sons and daughters preference categories. It is wholly unnecessary to impose this hardship when simple priority setting can accomplish the same end.

The backlog of spouses and children of LPRs has already begun to decrease, and there are fewer new applicants than there are individuals being accorded immigrant status under the "second preference category." This indicates, as predicted, that the current backlogs can be reduced and that a new stable level of family immigration can be achieved once the one-time "echo" of the legalization program has been processed. The small increases in the family preference categories for sons and daughters can be quickly made up once the top preference category is current.

Preserve employment-based immigration levels and reform labor market tests without penalizing employers. I dissent from the majority's recommendation to reduce employment-based immigration by almost 30 percent to only 100,000 admissions per year (including spouses and children). This level was already exceeded in FY 1996, when employment based legal immigration reached 117,000. Moreover, the continued growth of the international economy promises to increase employment-based legal immigration up to at least the current level of 140,000 admissions per year. The majority's recommendation to cut annual employment based admissions down to 100,000 per year would result in immediate backlogs, which would recreate precisely the situation that the Immigration Act of 1990 was enacted to cure.

Proposals that would result in the immediate creation of new backlogs are clearly wrong. The employment-based immigration ceiling should be kept at the current level, with review in three to five years.

New requirements and procedures need to be developed to replace the labor certification process to test the *bona fides* of the petitioning employer's need and to avoid adverse effect on similar U.S. workers. I dissent from the majority's recommendation that the solution is that such employers be required to pay a "substantial fee" or tax for the privilege of sponsoring international personnel.

The "substantial fee" approach simply does not address the real issues. It substitutes a penalty on certain employers for an honest assessment of what is beneficial to the national interest and what is practical in an environment of heightened international competition.

The majority wants to label the imposition of fees to be a use of "market forces," but it is obvious that government-imposed tariffs and fees are the complete opposite of market forces. For the government to charge a substantial, arbitrarily-set fee that will be used for purposes other than expense of adjudication and processing the application would be more like a tax, the antithesis of market forces. The majority would not only impose a penalty fee but would also require such employers to meet subjective tests of eligibility, such as whether it took "appropriate steps to recruit U.S. workers." It is hard to imagine that this proposal would not result in a new bureaucracy sitting in judgment on employers' compliance with new regulations and requirements.

The majority's proposal will serve more to penalize U.S. employers who petition for international personnel than to prevent adverse effect. Unfortunately, a proper analysis of these issues and more thoughtful recommendations remain to be done.

Structural Reform

Restructure the federal immigration responsibilities to separate the adjudications function from the enforcement function but keep them in the Department of Justice along with the appeals function. The federal responsibilities to conduct immigration enforcement, both at the border and inside the U.S., and to adjudicate immigration and naturalization applications and petitions have not been managed adequately.

Although it has received substantial increases in appropriations for staff, equipment, and other resources, the enforcement function continues to suffer from a lack of strategic coordination. While important improvements have been made in enforcement at the border, coordination with interior enforcement is tactical at best and often exists in form only. Interior enforcement is led and managed by officials who have been charged with too many other responsibilities.

At most levels of the INS, inadequate attention is given to the glaring imbalances in staff and resource allocations to the sequential steps of the enforcement process so that the consequences of apprehension are neither swift nor certain. Distracted and overloaded management also increases the risk of error and misconduct by its subordinate staff. Simply put, there is not a single, focused, national chain of command to pursue an integrated national enforcement strategy, and the immigration function and the nation suffer as a result.

Similarly on the adjudications side, huge increases in fee account receipts have not resulted in proportional improvements in accuracy or efficiency. Managers at the local, regional, and national levels have not been adequately concentrated on their adjudications responsibilities in immigration and naturalization. The economies of scale and additional resources provided by the substantial caseload (and therefore revenue) increases have not been converted into improvements, rather there is the appearance that there is just too much to do.

The lack of success in enforcement and adjudications is not simply for want of trying. The immigration agencies are served by many talented and determined staff and managers. The current administration of the Immigration and Naturalization Service has made impressive strides forward on a number of fronts and its accomplishments are historic.

If, despite huge increases in funding and dedicated staff and leadership, the federal government still has not achieved adequate management of its immigration responsibilities, it is inescapable that something else must be done in order to arrive at a successful equation. Based on the information, interviews, and analyses the commission has reviewed over the past several years, it becomes an inescapable conclusion that the primary immigration functions need to be separated and restructured.

Separation of the enforcement and adjudications functions is the only solution to the current overload of responsibilities competing for attention that is obvious at every level of the INS. Separation of the functions would permit the establishment of unified, focused chains of command and operations at every level. Separation of enforcement from adjudications would allow each function to have a clear mission and to set clear goals on by which performance could be judged and accountability enforced. Separate functions would benefit greatly from the ability to gear hiring, training, promotions, and discipline to a clear mission.

At present, with its combined missions, the INS is often in internal contradiction, and its personnel, trained primarily in one mission or the other, are asked to crisscross from positions calling for one type of expertise and then the other. The most telling evidence of the value of separating the enforcement and adjudications functions comes the recent history of INS itself. The two most successful examples of INS adjudications programs, the 1986 Legalization program and the creation of an independent corps of asylum officers in 1990, are both instances where adjudications programs were consciously and deliberately kept separate and insulated from the enforcement mission of the INS. These practical, real world examples conclusively make the case for separation of enforcement from adjudications.

Of course, separation and restructuring of the immigration functions is not a panacea in and of itself. The combined missions are far from the only problem confronting the agencies, and the separation of the functions should be seen only as providing a necessary foundation from which real, lasting solutions can be hammered out to the many substantive challenges confronting the government. The substantive problems of operations and policy remain the fundamental issues of concern; structural changes provide means to better accomplishing these ends.

The benefits of restructuring can be gained with far less disruption, at less cost, and with greater chance of success if it is accomplished within the Department of Justice. The two main functions of the INS—enforcement and adjudications—should be separated into two different agencies within the Department of Justice, with separate leadership. This would also permit the insertion of a senior level office in the Department of Justice to coordinate and lead the separate functional agencies.

The creation of the Executive Office for Immigration Review [EOIR], which separated the immigration hearings and appeals function from the rest of INS in 1983, is a good model for this restructuring. Like the EOIR, each agency should have its separate mission, career paths, training, and management, while still benefiting from policy and strategic coordination at senior department level.

The Department of Justice is the proper place for the immigration enforcement function and it is the proper place for the adjudications function. The Department of Justice has long experience with and is the preeminent repository of expertise in both the immigration enforcement and adjudications functions. The Department of Justice epitomizes the values of due process and the rule of law, which are especially important in achieving effective enforcement and fair, accurate adjudications for a well-regulated, highly-selective legal immigration system. The division of these two immigration functions, within the Department of Justice, would be far less disruptive to either responsibility at a time when both adjudications workloads and the need for enforcement activities are at record levels.

In contrast, transferring the adjudications function to the Department of State would require it to integrate into its organization large operations programs with which it has little familiarity. Any department other than Justice would have to undertake the absorption of new missions, expertise, and institutional values with which it has little experience.

Keeping both functions within the Department of Justice would be far less costly than the transfer of all adjudications activities to the Department of State or another department. The personnel, training, facilities, and management are already fully part of and integrated into Department of Justice. Separation of enforcement and adjudications within the Department of Justice raises mostly issues of management and structure, rather the basic re-creation of a substantial institution in an entirely new setting.

Moreover, keeping adjudications within Justice would not require the proposed creation of an entirely new independent agency for immigration review in place of EOIR. There are substantive arguments on both sides of this issue, and it is one that should be decided on the basis of merit, not mandated simply due to interdepartmental restructuring.

As in all cases of organizational change, some predictable disruption and added expense are justifiable if the outcome is most likely to be an improvement. However, the consequences of the proposed transfer of all adjudications functions to the Department of State are far from certain. Unlike the Department of Justice, the Department of State would be undertaking a entirely different mission with which it has had little experience or interest. Historically, immigration and consular matters have received tertiary attention and status at the Department of State. It is a gamble to think that these long-standing attitudes will change for the better. While some argue that the Department of State could and should adopt an entirely new mission in the post-Cold War era, beginning this debate by making the massive implantation of the entire federal immigration adjudications function puts the horse before the cart and is a great risk to take.

The Department of State has not had experience with the large volume of substantive adjudications that heretofore have been done by the Department of Justice. Moreover, elementary concepts of legal process, including administrative and judicial review, precedent decisions, and the right to counsel, have been vigorously resisted by the Department of State throughout its history of consular affairs. The Department of State has energetically fought all attempts in litigation and in legislation to make individual consular decisions subject to any review within the Department of State itself or by the federal courts. It is difficult for anyone familiar with this history to conceive that these Department of State traditions would soon give way to modern legal concepts and the consistency and accuracy that is their goal.

In contrast, the Department of Justice has the experience and the expertise. It needs only the restructuring and separation of enforcement from adjudications, with dedicated leadership and management for each, to have the best chance of success, at less cost and with less disruption of the fundamental immigration responsibilities.

U.S. COMMISSION ON IMMIGRATION REFORM
2430 E STREET NW, SOUTH BUILDING
WASHINGTON, DC 20037
202-776-8400

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U.S. COMMISSION ON IMMIGRATION REFORM